

A-Engrossed
Senate Bill 763

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Sponsored by Senator SCHRADER, Representative NOLAN; Senators BATES, DEVLIN, DINGFELDER, HASS, MORRISETTE, Representatives CLEM, GARRETT, GREENLICK, ROBLAN

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 Department of Land Conservation and Development to implement system for buying and selling transferable development credits to encourage landowners to voluntarily protect resource lands.]

Authorizes cities, counties, metropolitan service districts and certain state agencies to establish transferable development credit system for purpose of allowing specified persons to transfer developmental interests from one government unit to another.

Requires participating governmental units to enter into intergovernmental agreement with each other and, for purpose of administering process, with Department of Land Conservation and Development.

Requires department to report on transferable development credit systems to Seventy-seventh Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to transferable development credits; and declaring an emergency.

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

SECTION 1. (1) The Legislative Assembly finds that:

(a) Working farms and forests make vital contributions to Oregon by:

(A) Providing jobs, timber, agricultural products, tax base and other social and economic benefits;

(B) Helping to maintain soil, air and water resources;

(C) Reducing levels of carbon dioxide in the atmosphere; and

(D) Providing habitat for wildlife and aquatic life.

(b) Natural resources, scenic and historic areas and open spaces promote a sustainable and healthy environment and natural landscape that contributes to the livability of Oregon.

(c) Population growth, escalating land values, increasing risks due to wildfire and invasive species and changes in land ownership and management objectives, with a resulting increase in conflict caused between resource uses and dispersed residential development, require that new methods be developed to facilitate the continued management of private lands zoned for farm use, forest use and mixed farm and forest use for the purposes of:

(A) Agricultural production and timber harvest; and

(B) Preservation of natural resources, scenic and historic areas and open spaces for future generations.

(2) The Legislative Assembly declares that transferable development credit systems:

(a) Complement the statewide land use planning system in Oregon and encourage effec-

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 tive local implementation of the statewide land use planning goals.

2 (b) Provide incentives for private landowners, local, regional, state and federal govern-
3 ments and other entities to permanently protect farm land and forestland, including a land
4 base for working farms, ranches, forests and woodlots, significant natural resources, scenic
5 and historic areas and open spaces.

6 (c) Benefit rural land owners, including owners of working farms, ranches, forests and
7 woodlots, that voluntarily provide stewardship of natural resources on private lands.

8 (d) Provide voluntary and effective methods to help improve the livability of urban areas
9 and to mitigate and adapt to global climate change.

10 **SECTION 2.** As used in this section and section 3 of this 2009 Act:

11 (1) "Conservation easement" has the meaning given that term in ORS 271.715.

12 (2) "Governmental unit" means a city, county, metropolitan service district or state
13 agency as defined in ORS 171.133.

14 (3) "Holder" has the meaning given that term in ORS 271.715.

15 (4) "Lot" has the meaning given that term in ORS 92.010.

16 (5) "Parcel" has the meaning given that term in ORS 92.010.

17 (6) "Receiving area" means a designated area of land to which a holder of development
18 credits generated from a sending area may transfer the development credits and in which
19 additional uses or development, not otherwise allowed, are allowed by reason of the transfer.

20 (7) "Resource land" means:

21 (a) Lands outside an urban growth boundary planned and zoned for farm use, forest use
22 or mixed farm and forest use.

23 (b) Lands inside or outside urban growth boundaries identified:

24 (A) In an acknowledged local or regional government inventory as containing significant
25 wetland, riparian, wildlife habitat, historic, scenic or open space resources; or

26 (B) As containing important natural resources, estuaries, coastal shorelands, beaches
27 and dunes or other resources described in the statewide land use planning goals.

28 (c) "Conservation Opportunity Areas" identified in the "Oregon Conservation Strategy"
29 prepared in September of 2006 by the State Department of Fish and Wildlife.

30 (8) "Sending area" means a designated area of resource land from which development
31 credits generated from forgone development are transferable, for uses or development not
32 otherwise allowed, to a receiving area.

33 (9) "Tract" has the meaning given that term in ORS 215.010.

34 (10) "Transferable development credit" means a severable development interest in real
35 property that can be transferred from a lot, parcel or tract in a sending area to a lot, parcel
36 or tract in a receiving area.

37 (11) "Transferable development credit system" means a land use planning tool that allows
38 the record owner of a lot, parcel or tract of resource land in a sending area to voluntarily
39 sever and sell development interests from the lot, parcel or tract for purchase and use by a
40 potential developer to develop a lot, parcel or tract in a receiving area at a higher intensity
41 than otherwise allowed.

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

43 (13) "Urban reserve" has the meaning given that term in ORS 195.137.

44 **SECTION 3.** (1) One or more governmental units may establish a transferable develop-
45 ment credit system, including a process for allowing transfer of development interests from

1 a sending area within the jurisdiction of one governmental unit to a receiving area within
2 the jurisdiction of another governmental unit.

3 (2) If the transferable development credit system allows transfer of development inter-
4 ests between the jurisdictions of different governmental units, the process must be described
5 in an intergovernmental agreement under ORS 190.003 to 190.130 entered into by the gov-
6 ernmental units with land use jurisdiction over the sending and receiving areas and, for
7 purposes of administration of the process, the Department of Land Conservation and Devel-
8 opment. The intergovernmental agreement may contain provisions for sharing between
9 governmental units of the prospective ad valorem tax revenues derived from new develop-
10 ment in the receiving area authorized under the system.

11 (3) A transferable development credit system must provide for:

12 (a) The record owner of a lot, parcel or tract in a sending area to voluntarily sever and
13 sell development interests of the lot, parcel or tract for use in a receiving area;

14 (b) A potential developer of land in a receiving area to purchase transferable development
15 credits that allow a higher intensity use or development of the land, including development
16 bonuses or other incentives not otherwise allowed, through changes to the planning and
17 zoning or waivers of density, height or bulk limitations in the receiving area;

18 (c) The governmental units administering the system to determine the type, extent and
19 intensity of uses or development allowed in the receiving area, based on the transferable
20 development credits generated from severed and sold development interests; and

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

24 (4) A transferable development credit system must offer:

25 (a) Incentives for a record owner of resource land to voluntarily prohibit or limit devel-
26 opment on the resource land and to sell or transfer forgone development to lands within
27 receiving areas.

28 (b) Benefits to landowners by providing monetary compensation for limiting development
29 in sending areas.

30 (c) Benefits to developers by allowing increased development and development incentives
31 in receiving areas.

32 (5) The governmental units administering a transferable development credit system
33 must:

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

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

38 (c) Provide development bonuses and incentives to stimulate the demand for the pur-
39 chase and sale of transferable development credits.

40 (d) Require that the record owner of development interests transferred as development
41 credits from a sending area to a receiving area cause to be record, in the deed records of the
42 county in which the sending area is located, a conservation easement that:

43 (A) Limits development of the lot, parcel or tract from which the interests are severed
44 consistent with the transfer; and

45 (B) Names an entity, approved by the governmental units administering the system, as

1 the holder of the conservation easement.

2 (e) Maintain records of:

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

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

6 (C) The allowable level of use or development for each lot, parcel or tract after a transfer
7 of development credits.

8 (f) Provide periodic summary reports of activities of the system to the department.

9 (6) A receiving area must be composed of land that is within an urban growth boundary
10 or, subject to subsection (7) of this section, within an urban reserve established under ORS
11 195.137 to 195.145 and that is:

12 (a) Appropriate and suitable for development.

13 (b) Not subject to limitations designed to protect natural resources, scenic and historic
14 areas, open spaces or other resources protected under the statewide land use planning goals.

15 (c) Not within an area identified as a priority area for protection in the "Oregon Con-
16 servation Strategy" prepared in September of 2006 by the State Department of Fish and
17 Wildlife.

18 (d) Not within a "Conservation Opportunity Area" identified in the "Oregon Conservation
19 Strategy" prepared in September of 2006 by the State Department of Fish and Wildlife.

20 (7) Land within an urban reserve:

21 (a) May be the site of a receiving area only if:

22 (A) The receiving area is likely to be brought within an urban growth boundary at the
23 next periodic review under ORS 197.628 to 197.650 or legislative review under ORS 197.626;
24 and

25 (B) Development pursuant to the transferable development credits is allowed only after
26 the receiving area is brought within an urban growth boundary.

27 (b) That is selected for use as a receiving area may be designated for priority inclusion
28 in the urban growth boundary, when the urban growth boundary is amended, if the land
29 qualifies under the boundary location factors in a goal relating to urbanization.

30 (8) The governing body of a governmental unit administering a transferable development
31 credit system may, directly or indirectly through a contract with a nonprofit corporation,
32 establish a transferable development credit bank to facilitate:

33 (a) Buying severable development interests from lots, parcels or tracts of resource land
34 in a sending area.

35 (b) Selling transferable development credits to potential developers of lots, parcels or
36 tracts in a receiving area.

37 (c) Entering into agreements or contracts and performing acts necessary, convenient or
38 desirable to achieve the requirements set forth in this section and the objectives set forth
39 in section 1 of this 2009 Act.

40 (d) Managing funds available for the purchase and sale of transferable development
41 credits.

42 (e) Authorizing and monitoring expenditures associated with the system.

43 (f) Maintaining records of the transactions, including dates, purchase amounts and lo-
44 cations of severed development interests and development pursuant to transferred develop-
45 ment credits, that are sufficient to manage and evaluate the effectiveness of the system.

1 **(g) Providing periodic summary reports of activities of the system to the governing body**
2 **of a governmental unit administering the system.**

3 **(h) Obtaining appraisals of development interests and transferable development credits**
4 **as necessary and pricing transferable development credits for purchase or sale.**

5 **(i) Serving as a clearinghouse and information source for buyers and sellers of**
6 **transferable development credits.**

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

8 **(k) Soliciting and receiving grant funds for the implementation of this section and section**
9 **2 of this 2009 Act.**

10 **(9) A holder of a conservation easement shall hold, monitor and enforce the conservation**
11 **easement to ensure that lands in sending areas do not retain development credits transferred**
12 **under this section and section 2 of this 2009 Act.**

13 **SECTION 4. The Department of Land Conservation and Development shall make a report,**
14 **in the manner described in ORS 192.245, to the Seventy-seventh Legislative Assembly:**

15 **(1) Evaluating the transferable development credit systems that have been established**
16 **under sections 2 and 3 of this 2009 Act; and**

17 **(2) Recommending whether the program should be continued, modified, expanded or ter-**
18 **minated.**

19 **SECTION 5. This 2009 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
21 **on its passage.**

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