

Senate Bill 763

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 **as introduced**.

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.

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 emissions of greenhouse gases; and**

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

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

21 **(d) Complement the Oregon land use planning system and support effective implementa-**
22 **tion of the statewide land use planning goals.**

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

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

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

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

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

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

3 (6) "Sending area" means a designated area of resource land from which development
 4 credits generated from foregone development are transferable for use or development, not
 5 otherwise allowed, to a receiving area.

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

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

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

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

15 (11) "Urban reserve" has the meaning given that term in ORS 195.137.

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

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

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

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

23 (2) The Department of Land Conservation and Development, in consultation with the
 24 State Department of Agriculture, the State Forestry Department and the State Department
 25 of Fish and Wildlife, shall establish a transferable development credit system.

26 (3) The Department of Land Conservation and Development shall design the system so
 27 that it allows:

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

31 (b) A potential developer of a lot, parcel or tract in a receiving area to purchase
 32 transferable development credits that allow a higher intensity use or development of the lot,
 33 parcel or tract than otherwise allowed in the receiving area, in accordance with the system
 34 adopted by rule of the Land Conservation and Development Commission.

35 (c) The Department of Land Conservation and Development to determine the extent of
 36 use or development allowed based on the transferable development credit generated from the
 37 severed and sold development interests. The use and development allowed pursuant to a
 38 transferable development credit:

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

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

44 (d) The holder of a recorded mortgage encumbering a lot, parcel or tract, from which the
 45 record owner proposes to sever development interests for transfer, to be given prior written

1 notice of the proposed transaction and to approve or disapprove the transaction.

2 (4) The Department of Land Conservation and Development, or the governing body of a
 3 governmental unit that has entered into a written agreement to administer a transferable
 4 development credit system, may:

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

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

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

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

15 (5) A sending area must be composed of land outside an urban growth boundary that is
 16 zoned for farm use, forest use or mixed farm and forest use. Priority in choosing a sending
 17 area must be given:

18 (a) If the land is farmland, to land with soil classes I to IV as measured by the Agricul-
 19 tural Capability Classification System in use by the United States Department of Agriculture
 20 Natural Resources Conservation Service on the effective date of this 2009 Act.

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

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

24 (d) To other land identified by:

25 (A) The State Department of Agriculture based on a threat to stability for farming uses.

26 (B) The State Forestry Department based on a threat to stability for forest uses.

27 (C) The State Department of Fish and Wildlife based on a threat to stability for fish or
 28 wildlife habitat.

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

31 (a) Within an urban growth boundary; or

32 (b) Within an urban reserve that is adjacent to an urban growth boundary with a dem-
 33 onstrated need under ORS 197.296 (3) for buildable lands.

34 (7) The Department of Land Conservation and Development may, directly or indirectly
 35 through a contract with a nonprofit corporation, establish a transferable development credit
 36 bank for the purposes of:

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

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

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

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

1 (e) Authorizing and monitoring expenditures;

2 (f) Maintaining a registry 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 following a
7 transaction;

8 (g) Maintaining records of the transactions, including dates, purchase amounts and lo-
9 cations of severed development interests and development pursuant to transferred develop-
10 ment credits, that are sufficient to manage and evaluate the effectiveness of the system;

11 (h) Obtaining appraisals of development interests and transferable development credits
12 as necessary and pricing transferable development credits for sale;

13 (i) Serving as a clearinghouse and information source for buyers and sellers of
14 transferable development credits, and marketing transferable development credits and bank
15 services;

16 (j) Accepting donations of transferable development credits;

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

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

20 (8) The Department of Land Conservation and Development, the State Forestry Depart-
21 ment, the State Department of Agriculture or a governmental unit administering a
22 transferable development credit system pursuant to a written agreement with the Depart-
23 ment of Land Conservation and Development, may hold, monitor or enforce a conservation
24 easement or other property interest to ensure that lands in sending areas do not retain
25 residential development rights transferred under sections 1 to 4 of this 2009 Act.

26 **SECTION 4.** (1) State agencies as defined in ORS 171.133, including but not limited to the
27 Department of Land Conservation and Development, the State Department of Agriculture,
28 the State Forestry Department, the Department of State Lands and the State Department
29 of Fish and Wildlife, shall provide technical assistance:

30 (a) In the identification of the location and size of appropriate sending areas and receiv-
31 ing areas to governmental units designing transferable development credit systems.

32 (b) For the transferable development credit banking operations required to implement a
33 transferable development credit system.

34 (c) In crafting development bonuses and incentives, including the appropriate ratios of
35 transferable development credits to severed development interests, to generate market in-
36 terest in transferable development credits.

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

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

41 **Sec. 11.** (1) A subdivision or partition of property, or the establishment of a dwelling on prop-
42 erty, authorized under sections 5 to 11, **chapter 424, Oregon Laws 2007**, [of this 2007 Act] must
43 comply with all applicable standards governing the siting or development of the dwelling, lot or
44 parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or
45 parcel. However, the standards must not be applied in a manner that has the effect of prohibiting

1 the establishment of the dwelling, lot or parcel authorized under sections 5 to 11, **chapter 424,**
2 **Oregon Laws 2007**, [of this 2007 Act] unless the standards are reasonably necessary to avoid or
3 abate a nuisance, to protect public health or safety or to carry out federal law.

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

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

11 (A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or
12 on land within a ground water restricted area; or

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

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

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

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

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

39 (a) A lot or parcel lawfully created based on an authorization under section 6, 7 or 9, **chapter**
40 **424, Oregon Laws 2007**, [of this 2007 Act] remains a discrete lot or parcel, unless the lot or parcel
41 lines are vacated or the lot or parcel is further divided, as provided by law; and

42 (b) A dwelling or other residential use of the property based on an authorization under section
43 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [of this 2007 Act] is a permitted use and may be estab-
44 lished or continued by the claimant or a subsequent owner, except that once the claimant conveys
45 the property to a person other than the claimant's spouse or the trustee of a revocable trust in

1 which the claimant is the settlor, the subsequent owner must establish the dwellings or other resi-
2 dential use authorized under section 6, 7 or 9, **chapter 424, Oregon Laws 2007**, [of this 2007 Act]
3 within 10 years of the conveyance.

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

6 (a) Additional relief is not due; and

7 (b) An additional claim may not be filed, compensation is not due and a waiver may not be is-
8 sued with regard to the property under sections 5 to 11, **chapter 424, Oregon Laws 2007, and ORS**
9 **195.305 to 195.336** [22 of this 2007 Act] or **under** ORS 197.352 as in effect immediately before [the
10 effective date of this 2007 Act] **December 6, 2007**, except with respect to a land use regulation en-
11 acted after January 1, 2007.

12 (8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to
13 carry out a use of land authorized under sections 5 to 11, **chapter 424, Oregon Laws 2007**, [of this
14 2007 Act] from a willing seller in the manner provided by ORS 271.715 to 271.795. Metro, cities and
15 counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the
16 purchase and sale of severable development interests as described in [ORS 94.531] **sections 1 to 4**
17 **of this 2009 Act**. [A system established under this subsection may provide for the transfer of severable
18 development interests between the jurisdictions of the public entities that are parties to the agreement
19 for the purpose of allowing development to occur in a location that is different from the location in
20 which the development interest arises.]

21 (9) If a claimant is an individual, the entitlement to prosecute the claim under section 6, 7 or
22 **9, chapter 424, Oregon Laws 2007**, [of this 2007 Act] and an authorization to use the property
23 provided by a waiver under section 6, 7 or 9, **chapter 424, Oregon Laws 2007** [of this 2007 Act]:

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

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

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

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