

# A-Engrossed Senate Bill 997

Ordered by the Senate February 5  
Including Senate Amendments dated February 5

Sponsored by Senator SCHRADER (Presession filed.)

## 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.

Modifies description of certain lands, defined as "resource lands," from which development may be transferred. **Updates provisions that reference description.**  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to transferable development; amending ORS 94.536 and 94.538 and section 6, chapter 636,  
3 Oregon Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** ORS 94.536 is amended to read:

6 94.536. As used in this section and ORS 94.538:

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

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

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

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

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

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

16 (7) "Resource land" means:

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

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

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

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

24 (c) "Conservation Opportunity Areas" identified in the "Oregon Conservation Strategy" [*pre-*  
25 *pared in September of 2006*] **adopted by the State Fish and Wildlife Commission and published**  
26 **by the State Department of Fish and Wildlife in September of 2006.**

27 (8) "Sending area" means a designated area of resource land from which development credits  
28 generated from forgone development are transferable, for uses or development not otherwise al-

**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 lowed, to a receiving area.

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

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

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

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

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

12 **SECTION 2.** ORS 94.538 is amended to read:

13 94.538. (1) One or more governmental units may establish a transferable development credit  
14 system, including a process for allowing transfer of development interests from a sending area  
15 within the jurisdiction of one governmental unit to a receiving area within the jurisdiction of an-  
16 other governmental unit.

17 (2) If the transferable development credit system allows transfer of development interests be-  
18 tween the jurisdictions of different governmental units, the process must be described in an inter-  
19 governmental agreement under ORS 190.003 to 190.130 entered into by the governmental units with  
20 land use jurisdiction over the sending and receiving areas and, for purposes of administration of the  
21 process, the Department of Land Conservation and Development. The intergovernmental agreement  
22 may contain provisions for sharing between governmental units of the prospective ad valorem tax  
23 revenues derived from new development in the receiving area authorized under the system.

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

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

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

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

34 (d) The holder of a recorded instrument encumbering a lot, parcel or tract from which the re-  
35 cord owner proposes to sever development interests for transfer to be given prior written notice of  
36 the proposed transaction and to approve or disapprove the transaction.

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

38 (a) Incentives for a record owner of resource land to voluntarily prohibit or limit development  
39 on the resource land and to sell or transfer forgone development to lands within receiving areas.

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

42 (c) Benefits to developers by allowing increased development and development incentives in re-  
43 ceiving areas.

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

45 (a) Designate sending areas that are chosen to achieve the requirements set forth in this section

1 and the objectives set forth in ORS 94.534.

2 (b) Designate receiving areas that are chosen to achieve the requirements set forth in this sec-  
3 tion and the objectives set forth in ORS 94.534.

4 (c) Provide development bonuses and incentives to stimulate the demand for the purchase and  
5 sale of transferable development credits.

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

9 (A) Limits development of the lot, parcel or tract from which the interests are severed consist-  
10 ent with the transfer; and

11 (B) Names an entity, approved by the governmental units administering the system, as the  
12 holder of the conservation easement.

13 (e) Maintain records of:

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

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

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

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

20 (6) A receiving area must be composed of land that is within an urban growth boundary or,  
21 subject to subsection (7) of this section, within an urban reserve established under ORS 195.137 to  
22 195.145 and that is:

23 (a) Appropriate and suitable for development.

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

26 (c) Not within an area identified as a priority area for protection in the "Oregon Conservation  
27 Strategy" [*prepared in September of 2006*] **adopted by the State Fish and Wildlife Commission**  
28 **and published** by the State Department of Fish and Wildlife **in September of 2006**.

29 (d) Not within a "Conservation Opportunity Area" identified in the "Oregon Conservation  
30 Strategy" [*prepared in September of 2006*] **adopted by the State Fish and Wildlife Commission**  
31 **and published** by the State Department of Fish and Wildlife **in September of 2006**.

32 (7) Land within an urban reserve:

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

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

36 (B) Development pursuant to the transferable development credits is allowed only after the re-  
37 ceiving area is brought within an urban growth boundary.

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

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

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

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

3 (c) Entering into agreements or contracts and performing acts necessary, convenient or desira-  
4 ble to achieve the requirements set forth in this section and the objectives set forth in ORS 94.534.

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

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

7 (f) Maintaining records of the transactions, including dates, purchase amounts and locations of  
8 severed development interests and development pursuant to transferred development credits, that  
9 are sufficient to manage and evaluate the effectiveness of the system.

10 (g) Providing periodic summary reports of activities of the system to the governing body of a  
11 governmental unit administering the system.

12 (h) Obtaining appraisals of development interests and transferable development credits as nec-  
13 essary and pricing transferable development credits for purchase or sale.

14 (i) Serving as a clearinghouse and information source for buyers and sellers of transferable de-  
15 velopment credits.

16 (j) Accepting donations of transferable development credits.

17 (k) Soliciting and receiving grant funds for the implementation of this section and ORS 94.536.

18 (9) A holder of a conservation easement shall hold, monitor and enforce the conservation ease-  
19 ment to ensure that lands in sending areas do not retain development credits transferred under this  
20 section and ORS 94.536.

21 **SECTION 3.** Section 6, chapter 636, Oregon Laws 2009, is amended to read:

22 **Sec. 6.** (1) There is established the Oregon Transfer of Development Rights Pilot Program in the  
23 Department of Land Conservation and Development. Working with the State Forestry Department,  
24 the State Department of Agriculture and local governments and with other state agencies, as ap-  
25 propriate, the Department of Land Conservation and Development shall implement the pilot pro-  
26 gram.

27 (2) The Land Conservation and Development Commission shall adopt rules to implement the pi-  
28 lot program. The commission, by rule, may:

29 (a) Establish a maximum ratio of transferable development rights to severed development inter-  
30 ests in a sending area for each pilot project. The maximum ratio:

31 (A) Must be calculated to protect lands planned and zoned for forest use and to create incen-  
32 tives for owners of land in the sending area to participate in the pilot project; and

33 (B) May not exceed one transferable development right to one severed development interest if  
34 the receiving area is outside of an urban growth boundary.

35 (b) Require participating owners of land in a sending area to grant conservation easements  
36 pursuant to ORS 271.715 to 271.795, or otherwise obligate themselves, to ensure that additional  
37 residential development of their property does not occur.

38 (c) Require participating owners of land in a sending area to allow reasonable public access to  
39 the property.

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

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

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

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

5 (c) Designed so that new development authorized in a receiving area does not conflict with a  
6 resource or area inventoried under a statewide land use planning goal relating to natural resources,  
7 scenic and historic areas and open spaces, or with an area identified as a Conservation Opportunity  
8 Area in the [*Oregon Conservation Strategy*, 2006,] **“Oregon Conservation Strategy” adopted by**  
9 **the State Fish and Wildlife Commission and published** by the State Department of Fish and  
10 **Wildlife in September of 2006.**

11 (5) The commission may select up to three pilot projects for the transfer of development rights  
12 under sections 6 to 8, **chapter 636, Oregon Laws 2009** [*of this 2009 Act*].

13 (6) A sending area for a pilot project under sections 6 to 8, **chapter 636, Oregon Laws 2009**  
14 [*of this 2009 Act*]:

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

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

17 (c) Must contain four or fewer dwelling units per square mile.

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

19 (8)(a) Except as provided otherwise in paragraph (b) of this subsection, a local government par-  
20 ticipating in a pilot project shall select a receiving area for the pilot project based on the following  
21 priorities:

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

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

25 (C) Third priority is lands that are within an urban unincorporated community or a rural com-  
26 munity in an acknowledged comprehensive plan.

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

32 (c) If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving  
33 area in a pilot project, the minimum residential density of development allowed under sections 6 to  
34 **8, chapter 636, Oregon Laws 2009**, [*of this 2009 Act*] must be at least 10 dwelling units per net  
35 acre.

36 (d) A receiving area may not be located within 10 miles of the Portland metropolitan area urban  
37 growth boundary.

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

39 (10) The commission, by rule, may provide a bonus in the form of a higher ratio if a substantial  
40 portion of the new development in the receiving area of the pilot project is affordable housing within  
41 an urban growth boundary.

42 **SECTION 4. This 2010 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**  
44 **on its passage.**