

House Bill 2132

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber 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 **as introduced**.

Modifies provisions of pilot program that authorizes transfer of development rights between properties in areas designated as sending areas and receiving areas.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfer of development pilot program; amending sections 6 and 7, chapter 636, Oregon
3 Laws 2009; and declaring an emergency.

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

5 **SECTION 1.** Section 6, chapter 636, Oregon Laws 2009, as amended by section 3, chapter 5,
6 Oregon Laws 2010, is amended to read:

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

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

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

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

18 (B) May not exceed one transferable development right to one severed development interest if
19 the receiving area is outside of *[an]* urban growth *[boundary]* **boundaries and outside**
20 **unincorporated communities;**

21 (C) **May not exceed two transferable development rights to one severed development in-**
22 **terest if the receiving area is in an unincorporated community; and**

23 (D) **Must be consistent with plans for public facilities and services in the receiving area.**

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

27 *[(c) Require participating owners of land in a sending area to allow reasonable public access to the*
28 *property.]*

29 (3) The commission, by rule, shall establish a process for selecting pilot projects from among
30 potential projects nominated by local governments. The process must require local governments to

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 nominate potential projects by submitting a concept plan for each proposed pilot project, including
 2 proposed amendments, if any, to the comprehensive plan and land use regulations implementing the
 3 plan that are necessary to implement the pilot project.

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

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

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

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

14 (5) The commission may select up to three pilot projects for the transfer of development rights
 15 under sections 6 to 8, chapter 636, Oregon Laws 2009.

16 (6) A sending area for a pilot project under sections 6 to 8, chapter 636, Oregon Laws 2009:

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

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

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

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

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

24 (A) First priority is lands within an urban growth boundary[;].

25 (B) Second priority is lands that are adjacent to an urban growth boundary and that are subject
 26 to an exception from a statewide land use planning goal relating to agricultural lands or
 27 forestlands[;].

28 (C) Third priority is lands that are:

29 (i) Within an urban unincorporated community or a rural community [*in an acknowledged com-*
 30 *prehensive plan.*]; **or**

31 (ii) **In a resort community, or a rural service center, that contains at least 100 dwelling**
 32 **units at the time the pilot project is approved.**

33 (D) **Fourth priority is exception areas approved under ORS 197.732 that are adjacent to**
 34 **urban unincorporated communities or rural communities, if the county agrees to bring the**
 35 **receiving area within the boundaries of the community and to provide the community with**
 36 **water and sewer service.**

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

42 (c) [*If lands described in paragraph (a)(B) of this subsection are selected for use as a receiving*
 43 *area in a pilot project,*] **The minimum residential density of development allowed [under sections 6 to**
 44 **8, chapter 636, Oregon Laws 2009, must be at least 10 dwelling units per net acre.] in receiving areas**
 45 **intended for residential development is:**

1 (A) For second priority lands described in paragraph (a)(B) of this subsection, at least
 2 five dwelling units per net acre or 125 percent of the average residential density allowed
 3 within the urban growth boundary when the pilot project is approved by the commission,
 4 whichever is greater.

5 (B) For third priority and fourth priority lands described in paragraph (a)(C) and (D) of
 6 this subsection, at least 125 percent of the average residential density allowed on land
 7 planned for residential use within the unincorporated community when the pilot project is
 8 approved by the commission.

9 (d) For third and fourth priority lands described in paragraph (a)(C) and (D) of this sub-
 10 section that are within one jurisdiction but adjacent to another jurisdiction, the written
 11 consent of the adjacent jurisdiction is required for designation of the receiving area.

12 [(d)] (e) A receiving area may not be located within 10 miles of the Portland metropolitan area
 13 urban growth boundary.

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

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

18 **SECTION 2.** Section 7, chapter 636, Oregon Laws 2009, is amended to read:

19 **Sec. 7.** (1) Notwithstanding contrary provisions of statewide land use planning goals relating to
 20 public facilities and services and urbanization, and notwithstanding ORS 215.700 to 215.780, a local
 21 government may change its comprehensive plan and land use regulations implementing the plan to
 22 allow residential development in a receiving area consistent with sections 6 to 8 [of this 2009 Act],
 23 **chapter 636, Oregon Laws 2009**, if the Land Conservation and Development Commission has ap-
 24 proved a concept plan for the pilot project.

25 (2) The local governments having land use jurisdiction over lands included in the sending area
 26 and the receiving area for the pilot project shall adopt amendments to their respective comprehen-
 27 sive plans and land use regulations implementing the plans that are consistent with subsection (3)
 28 of this section.

29 (3) When the commission has approved a proposed concept plan, the local governments having
 30 land use jurisdiction over the affected sending area and affected receiving area shall adopt overlay
 31 zone provisions and corresponding amendments to the comprehensive plan and land use regulations
 32 implementing the plan that identify the additional [residential] development allowed through partic-
 33 ipation in the pilot project. The Department of Land Conservation and Development shall review the
 34 overlay zones and corresponding comprehensive plan amendments in the manner of periodic review
 35 under ORS 197.628 to 197.650.

36 (4) Notwithstanding ORS 197.296 and 197.298 and statewide land use planning goals relating to
 37 urbanization, a local government may amend its urban growth boundary to include adjacent lands
 38 in a receiving area, consistent with an approved concept plan, if the net residential density of de-
 39 velopment authorized in the receiving area is at least [10 dwelling units per acre] **five dwelling**
 40 **units per net acre or 125 percent of the average residential density allowed on land planned**
 41 **for residential use within the urban growth boundary when the pilot project is approved by**
 42 **the commission, whichever is greater.**

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

45 (6) A county shall review an application for a pilot project under sections 6 to 8 [of this 2009

1 *Act*], **chapter 636, Oregon Laws 2009**, as a comprehensive plan amendment. A county may apply
2 other procedures, including master plan approval, site plan review or conditional use review as the
3 county finds appropriate to subsequent phases of review of the pilot project.

4 **(7) When development rights transfers authorized by the pilot project under sections 6**
5 **to 8, chapter 636, Oregon Laws 2009, result in the transfer of development rights from the**
6 **jurisdiction of one local government to another local government and cause a potential shift**
7 **of ad valorem tax revenues between jurisdictions, the local governments may enter into an**
8 **intergovernmental agreement under ORS 190.003 to 190.130 that provides for sharing between**
9 **the local governments of the prospective ad valorem tax revenues derived from new devel-**
10 **opment in the receiving area.**

11 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
12 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
13 **on its passage.**

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