

House Bill 474 (COMMITTEE SUBSTITUTE)

By: Representatives Hudgens of the 24th, McBee of the 88th and Heard of the 89th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 66A of Title 36 of the Official Code of Georgia Annotated, relating to the
2 transfer of development rights, so as to define certain terms; to revise requirements for
3 procedures relative to the creation of the transfer of development rights within or between
4 political subdivisions; to specify when such transfers are effective; to authorize
5 intergovernmental transfers; to provide an effective date; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 66A of Title 36 of the Official Code of Georgia Annotated, relating to the transfer
10 of development rights, is amended by striking in its entirety Code Section 36-66A-1, relating
11 to definitions relative to such chapter, and inserting in lieu thereof the following:

12 "36-66A-1.

13 As used in this chapter, the term:

14 (1) 'Development rights' means the maximum development that would be allowed on the
15 sending property under any general or specific plan and local zoning ordinance of a
16 municipality or county in effect on the date the municipality or county adopts an
17 ordinance pursuant to this chapter. Development rights may be calculated and allocated
18 in accordance with factors including dwelling units, area, floor area, floor area ration,
19 height limitations, traffic generation, or any other criteria that will quantify a value for
20 the development rights in a manner that will carry out the objectives of this Code section.

21 (2) 'Person' means any natural person, corporation, partnership, trust, foundation,
22 nonprofit agency, or other legal entity.

23 (3) 'Receiving area' means an area identified by an ordinance as an area authorized to
24 receive development rights transferred from a sending area.

25 ~~(3)~~(4) 'Receiving property' means a lot or parcel within which development rights are
26 increased pursuant to a transfer of development rights. Receiving property shall be

1 appropriate and suitable for development and shall be sufficient to accommodate the
 2 transferable development rights of the sending property without substantial adverse
 3 environmental, economic, or social impact to the receiving property or to neighboring
 4 property.

5 (5) 'Sending area' means an area identified by an ordinance as an area from which
 6 development rights are authorized to be transferred to a receiving area.

7 ~~(4)~~(6) 'Sending property' means a lot or parcel with special characteristics, including
 8 farm land; woodland; desert land; mountain land; a flood plain; natural habitats;
 9 recreation areas or parkland, including golf course areas; or land that has unique
 10 aesthetic, architectural, or historic value that a municipality or county desires to protect
 11 from future development.

12 ~~(5)~~(7) 'Transfer of development rights' means the process by which development rights
 13 from a sending property are affixed to one or more receiving properties."

14 SECTION 2.

15 Said chapter is further amended by striking in its entirety Code Section 36-66A-2, relating
 16 to procedures, methods, and standards for the transfer of development rights, and inserting
 17 in lieu thereof the following:

18 "36-66A-2.

19 (a) Pursuant to the provisions of this Code section, the governing body of any municipality
 20 or county by ordinance may, in order to conserve and promote the public health, safety, and
 21 general welfare, establish procedures, methods, and standards for the transfer of
 22 development rights within its jurisdiction. ~~Any proposed transfer of development rights~~
 23 ~~from the sending property shall be subject to the notice and hearing requirements of Code~~
 24 ~~Section 36-66-4. Any proposed transfer of development rights to the receiving property~~
 25 ~~shall be subject to the notice, hearing, and signage requirements, if any, of the municipality~~
 26 ~~having jurisdiction over the receiving property or, if no municipality has such jurisdiction,~~
 27 ~~the county having jurisdiction over the receiving property as required by such local~~
 28 ~~governing authority for rezoning.~~

29 (b)(1) Any proposed transfer of development rights shall be subject to the approval and
 30 consent of the property owners of both the sending and receiving property and shall be
 31 subject to a separate vote of approval or disapproval by the local governing authority.

32 (2) Notwithstanding the provisions of paragraph (1) of this subsection, an ordinance
 33 enacted by the governing authority of a consolidated government may, but is not required
 34 to, provide that any proposed transfer of development rights shall be subject to a separate
 35 vote of approval or disapproval by the governing authority.

1 (c) Prior to any transfer of development rights, a municipality or county shall adopt an
2 ordinance providing for:

3 (1) The issuance and recordation of the instruments necessary to sever development
4 rights from the sending property and to affix development rights to the receiving
5 property. These instruments shall be executed by the affected property owners and
6 lienholders;

7 (2) The preservation of the character of the sending property and assurance that the
8 prohibitions against the use and development of the sending property shall bind the
9 landowner and every successor in interest to the landowner;

10 (3) The severance of transferable development rights from the sending property and the
11 delayed transfer of development rights to a receiving property;

12 (4) The purchase, sale, exchange, or other conveyance of transferable development rights
13 prior to the rights being affixed to a receiving property;

14 (5) A system for monitoring the severance, ownership, assignment, and transfer of
15 transferable development rights;

16 (6) The right of a municipality or county to purchase development rights and to hold
17 them for conservation purposes or resale;

18 (7) The right of a person to purchase development rights and to hold them for
19 conservation purposes or resale;

20 (8) Development rights made transferable pursuant to this Code section shall be interests
21 in real property and shall be considered as such for purposes of conveyancing and
22 taxation. Once a deed of transferable development rights created pursuant to this Code
23 section has been sold, conveyed, or otherwise transferred by the owner of the parcel from
24 which the development rights were derived, the transfer of development rights shall vest
25 in the grantee and become freely alienable. For the purposes of ad valorem real property
26 taxation, the value of a transferable development right shall be deemed appurtenant to the
27 sending property until the transferable development right is registered as a distinct
28 interest in real property with the appropriate tax assessor or the transferable development
29 right is used at a receiving property and becomes appurtenant thereto; and

30 (9) A map or other description of areas designated as sending and receiving areas for the
31 transfer of development rights between properties; and

32 ~~(9)~~(10) Such other provisions as the municipality or county deems necessary to aid in the
33 implementation of the provisions of this chapter.

34 (d)(1) Prior to the enactment of an ordinance as provided in subsection (c) of this Code
35 section and prior to any action to approve or disapprove a proposed transfer required by
36 paragraph (1) of subsection (b) of this Code section, the local governing authority shall
37 provide for a hearing on the proposed ordinance or transfer. At least 15 but not more than

1 45 days prior to the date of the hearing, the local governing authority shall cause to be
2 published in a newspaper of general circulation within the territorial boundaries of the
3 political subdivision a notice of the hearing. The notice shall state the time, place, and
4 purpose of the hearing. Any proposed transfer of development rights requiring approval
5 or disapproval of the local governing authority shall be subject to any signage
6 requirements required by law for rezonings.

7 (2) Prior to any changes in an area designated in an ordinance as a sending or receiving
8 area, the local governing authority shall provide for notice and a hearing as provided in
9 paragraph (1) of this subsection.

10 (e) Proposed transfers of development rights shall become effective upon the recording of
11 the conveyance with the appropriate deed-recording authorities and the filing of a certified
12 copy of such recording with the local governing authority of each political subdivision in
13 which a sending or receiving area is located in whole or in part.

14 (f) Municipalities and counties which are jointly affected by development are authorized
15 to enter in to intergovernmental agreements for the purpose of enacting interdependent
16 ordinances providing for the transfer of development rights between or among such
17 jurisdictions, provided that such agreements otherwise comply with applicable laws. Any
18 ordinances enacted pursuant to this subsection may provide for additional notice and
19 hearing and signage requirements applicable to properties within the sending and receiving
20 areas in each participating political subdivision."

22 **SECTION 3.**

23 This Act shall become effective upon its approval by the Governor or upon its becoming law
24 without such approval.

25 **SECTION 4.**

26 All laws and parts of laws in conflict with this Act are repealed.