

Senate Bill 239

By: Senators Lee of the 29th and Meyer von Bremen of the 12th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 24 of the Official Code of Georgia Annotated,
2 relating to authentication of writings, so as to provide for authentication of ordinances and
3 resolutions of counties and municipal corporations; to amend Title 36 of the Official Code
4 of Georgia Annotated, relating to local government, so as to change certain provisions
5 regarding transfer of development rights; to define certain terms; to revise requirements for
6 procedures relative to the creation of the transfer of development rights within or between
7 political subdivisions; to specify when such transfers are effective; to authorize
8 intergovernmental transfers; to change certain provisions regarding codification of local
9 government ordinances; to change certain definitions; to provide for posting or furnishing
10 of codified ordinances and resolutions; to authorize authentication of codified ordinances and
11 resolutions; to provide an effective date; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

13 Article 2 of Chapter 7 of Title 24 of the Official Code of Georgia Annotated, relating to
14 authentication of writings, is amended by striking Code Section 24-7-22, which is currently
15 reserved, and inserting a new Code section to read as follows:
16

17 "24-7-22.

18 When certified by a public officer, clerk, or keeper of the county or municipal records
19 specified in Code Section 24-7-20 or 24-7-21 and in the absence of contrary evidence,
20 judicial notice may be taken of a copy of any ordinance or resolution included within a
21 general codification required by paragraph (1) of subsection (b) of Code Section 36-80-19
22 as representing an ordinance or resolution duly approved by the governing authority and
23 currently in force as presented. Any such certified copy shall be self-authenticating and
24 shall be admissible as prima-facie proof of any such ordinance or resolution before any
25 court or administrative body."

SECTION 2.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by striking Code Section 36-66A-1, relating to definitions relative to transfer of development rights, and inserting in lieu thereof the following:

"36-66A-1.

As used in this chapter, the term:

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

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

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

~~(3)~~(4) 'Receiving property' means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.

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

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

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

SECTION 3.

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

1 "36-66A-2.

2 (a) Pursuant to the provisions of this Code section, the governing body of any municipality
 3 or county by ordinance may, in order to conserve and promote the public health, safety, and
 4 general welfare, establish procedures, methods, and standards for the transfer of
 5 development rights within its jurisdiction. ~~Any proposed transfer of development rights
 6 from the sending property shall be subject to the notice and hearing requirements of Code
 7 Section 36-66-4. Any proposed transfer of development rights to the receiving property
 8 shall be subject to the notice, hearing, and signage requirements, if any, of the municipality
 9 having jurisdiction over the receiving property or, if no municipality has such jurisdiction,
 10 the county having jurisdiction over the receiving property as required by such local
 11 governing authority for rezoning.~~

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

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

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

21 (1) The issuance and recordation of the instruments necessary to sever development
 22 rights from the sending property and to affix development rights to the receiving
 23 property. These instruments shall be executed by the affected property owners and
 24 lienholders;

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

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

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

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

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

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

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

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

13 ~~(9)~~(10) Such other provisions as the municipality or county deems necessary to aid in the
 14 implementation of the provisions of this chapter.

15 (d)(1) Prior to the enactment of an ordinance as provided in subsection (c) of this Code
 16 section and prior to any action to approve or disapprove a proposed transfer required by
 17 paragraph (1) of subsection (b) of this Code section, the local governing authority shall
 18 provide for a hearing on the proposed ordinance or transfer. At least 15 but not more than
 19 45 days prior to the date of the hearing, the local governing authority shall cause to be
 20 published in a newspaper of general circulation within the territorial boundaries of the
 21 political subdivision a notice of the hearing. The notice shall state the time, place, and
 22 purpose of the hearing. Any proposed transfer of development rights requiring approval
 23 or disapproval of the local governing authority shall be subject to any signage
 24 requirements required by law for rezonings.

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

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

32 (f) Municipalities and counties which are jointly affected by development are authorized
 33 to enter in to intergovernmental agreements for the purpose of enacting interdependent
 34 ordinances providing for the transfer of development rights between or among such
 35 jurisdictions, provided that such agreements otherwise comply with applicable laws. Any
 36 ordinances enacted pursuant to this subsection may provide for additional notice and

1 hearing and signage requirements applicable to properties within the sending and receiving
 2 areas in each participating political subdivision."

3 **SECTION 4.**

4 Said title is further amended by striking paragraph (1) of subsection (a) and by striking
 5 subsection (d) of Code Section 36-80-19, relating to codification of local government
 6 ordinances, and inserting in their place the following:

7 "(1) 'Local governing authority' means the governing authority of each municipality; and
 8 county, and consolidated government in this state."

9 "(d) Each such general codification shall be:

10 (1) Made available by posting such codification on the Internet; or

11 (2) A copy of each such general codification shall be furnished Furnished promptly as
 12 a copy to the State Law Library which shall be the official state repository for such
 13 general codifications; and provided, further, that counties financing all or part of the cost
 14 of codification through law library fees pursuant to Code Sections 36-15-7 and 36-15-9
 15 shall furnish a copy of each general codification

16 (3) In counties which have established a county law library, furnished as a copy to the
 17 county law library."

18 **SECTION 5.**

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

21 **SECTION 6.**

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