

Senate Bill 86

By: Senators Hudgens of the 47th, Zamarripa of the 36th, Reed of the 35th, and Kemp of the 46th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 66A of Title 36 of the Official Code of Georgia Annotated, relating to transfer of development rights, so as to define certain terms; to revise procedures relative to the creation of the transfer of development rights within or between political subdivisions; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 66A of Title 36 of the Official Code of Georgia Annotated, relating to transfer of development rights, is amended by striking Code Section 36-66A-1, relating to definitions, and Code Section 36-66A-2, relating to procedures, methods, and standards, and inserting in their place new Code Sections 36-66A-1 and 36-66A-2 to read as follows:

"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.

(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.

(6) 'Sending property' means a lot or parcel with special characteristics, including farm land; woodland; desert land; mountain land; a flood plain; natural habitats; wetlands; groundwater recharge area; marsh hammocks; 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.

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

36-66A-2.

(a) Pursuant to the provisions of this Code section, the governing body of any municipality or county by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Proposed transfers of development rights shall become effective upon the recording of the conveyance with the appropriate deed-recording authorities and the filing of a certified

1 copy of such recording with the local governing authority of each political subdivision in
2 which a sending or receiving area is located in whole or in part.

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

10 **SECTION 2.**

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

13 **SECTION 3.**

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