

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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SENATE DRS55188-LB-205B (3/3)

Short Title: Chatham TDR.

(Local)

Sponsors: Senator Atwater.

Referred to:

A BILL TO BE ENTITLED
AN ACT AUTHORIZING THE TRANSFER OF DEVELOPMENT RIGHTS BY CHATHAM
COUNTY AND MUNICIPALITIES LOCATED IN THAT COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Short Title. This act shall be known and may be cited as the
"Chatham County Transfer of Development Rights Act."

SECTION 2. Findings and Declarations. (a) The General Assembly finds and
declares that:

- (1) Chatham County is faced with the challenge of accommodating vital growth while maintaining its environmental integrity, and strengthening and preserving the natural resources, agriculture, open space and forestland, and the cultural heritage of the county.
- (2) The responsibility for meeting this challenge falls most heavily upon local government to appropriately shape the land-use patterns so that growth and preservation become compatible goals.
- (3) Until now municipalities in most areas of the State have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized.
- (4) The tools necessary to meet the challenge of balanced growth in an equitable manner in Chatham County must be made available to local government as the architects of Chatham County's future.

(b) The General Assembly therefore determines that it is in the public interest to authorize Chatham County and municipalities located in that county to establish and implement transfer of development rights programs.

SECTION 3. Definitions. For the purposes of this act, unless the context clearly indicates a different meaning:

- (1) "Capital improvement" means a governmental acquisition of real property or major construction project.
- (2) "Development" means the division of a parcel of land into two or more parcels; or the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill; or any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to this act.



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- 1 (3) "Development potential" means the maximum number of dwelling units or
2 square feet of nonresidential floor area that may be constructed on a
3 specified lot or in a specified zone under the comprehensive plan and land-
4 use regulations in effect on the date of the adoption of the development
5 transfer ordinance, and in accordance with recognized environmental
6 constraints.
- 7 (4) "Development transfer" means the conveyance of development potential, or
8 the permission for development, from one or more lots to one or more other
9 lots by deed, easement, or other means as authorized by ordinance adopted
10 pursuant to law.
- 11 (5) "Development transfer bank" refers to a bank established pursuant to this act
12 responsible for authorizing, overseeing, and evaluating development
13 transfers.
- 14 (6) "Municipality" means any city, town, or village, located wholly or partly
15 within Chatham County, that exercises planning jurisdiction under Article 19
16 of Chapter 160A of the General Statutes.
- 17 (7) "Receiving zone" means an area or areas designated in a comprehensive plan
18 or plans and a zoning ordinance or ordinances, within which development
19 may be increased, and which is otherwise consistent with the provisions of
20 Section 8 of this act.
- 21 (9) "Sending zone" means an area or areas designated in a comprehensive plan
22 and zoning ordinance, within which development may be restricted, and
23 which is otherwise consistent with the provisions of Section 7 of this act.
- 24 (10) "Variance" means permission granted by local governments to depart from
25 the literal requirements of a zoning ordinance.

26 **SECTION 4.** Transfer of Development Rights. The governing body of any county
27 or municipality that fulfills the criteria set forth in Section 5 of this act may, by ordinance,
28 provide for the transfer of development potential within its jurisdiction. The governing bodies
29 of two or more municipalities, or a county and one or more municipalities, that fulfill the
30 criteria set forth in Section 5 of this act may, by substantially similar ordinances, provide for a
31 joint program for the transfer of development potential, including transfers from sending zones
32 in one municipality or county to receiving zones in the other, regardless of whether or not those
33 municipalities are situated within the same county. Any such program shall be carried out by
34 the planning board or boards. A program may include the designation of one or more sending
35 or receiving zones.

36 **SECTION 5.** Criteria for Adopting Development Transfer Plan. Prior to the
37 adoption or amendment of any development transfer ordinance, a county or municipality shall:

- 38 (1) Adopt a development transfer plan element of its comprehensive plan in
39 accordance with the requirements of Section 6 of this act.
- 40 (2) Adopt a capital improvement program for the receiving zone, which includes
41 the location and cost of all infrastructure and a method of cost sharing if any
42 portion of the cost is to be assessed against developers.
- 43 (3) Adopt a utility service plan element of the comprehensive plan that
44 specifically addresses providing necessary utility services within any
45 designated receiving zone within a specified time period so that no
46 development seeking to utilize development potential transfer is
47 unreasonably delayed because utility services are not available.
- 48 (4) Prepare a real estate market analysis pursuant to Section 10 of this act, which
49 examines the relationship between the development rights anticipated to be
50 generated in the sending zones and the capacity of designated receiving
51 zones to accommodate the necessary development.

1 **SECTION 6.** Defining Development Transfer Comprehensive Plans. In order to
2 serve as the basis for a development transfer ordinance pursuant to Section 4 of this act, a
3 development transfer plan element of a comprehensive plan shall include:

- 4 (1) An estimate of the anticipated population and economic growth in the
5 municipality for the succeeding 10 years.
- 6 (2) The identification and description of all prospective sending and receiving
7 zones.
- 8 (3) An analysis of how the anticipated population growth estimated pursuant to
9 subdivision (1) of this section is to be accommodated within the
10 municipality in general, and the receiving zone or zones in particular.
- 11 (4) An estimate of existing and proposed infrastructure of the proposed
12 receiving zone.
- 13 (5) A presentation of the procedure and method for issuing the instruments
14 necessary to convey the development potential from the sending zone to the
15 receiving zone.
- 16 (6) Explicit planning objectives and design standards to govern the review of
17 applications for development in the receiving zone in order to facilitate their
18 review by the approving authority.

19 **SECTION 7.** Sending Zones. (a) A sending zone shall be composed
20 predominantly of land having one or more of the following characteristics:

- 21 (1) Forestland, agricultural land, woodland, floodplain, wetlands, threatened or
22 endangered species habitat, aquifer recharge area, recreation or park land,
23 waterfront, steeply sloped land, or other lands as defined by State law on
24 which development activities are restricted or precluded by duly enacted
25 local laws or ordinances or by laws or regulations adopted by federal or
26 State agencies;
- 27 (2) Lands and structures of aesthetic, architectural, and historic significance in
28 the county or municipality; or
- 29 (3) Other open space, critical and sensitive areas, natural hazard areas, and
30 improved or unimproved areas that should remain at low densities for
31 reasons of inadequate transportation, sewerage, or other infrastructure issues.

32 (b) Notwithstanding subsection (a) of this section, lands permanently restricted
33 through development easements or conservation easements existing prior to the adoption of a
34 development transfer ordinance may be included in a sending zone upon a finding by the
35 municipal governing body that this inclusion is in the public interest.

36 (c) The development transfer ordinance may assign bonus development
37 potential to specified properties in the sending zone based on specified criteria in order to
38 encourage the permanent protection of those lands pursuant to the development transfer
39 ordinance.

40 **SECTION 8.** Receiving Zones. (a) A receiving zone shall be appropriate and
41 suitable for development and shall be at least sufficient to accommodate all of the development
42 potential of the sending zone.

43 (b) At all times, there shall be a reasonable likelihood that a balance is
44 maintained between sending zone land values and the value of the transferable development
45 potential.

46 (c) The development potential of the receiving zone shall be realistically
47 achievable, considering:

- 48 (1) The availability of all necessary infrastructure.
- 49 (2) All of the provisions of the zoning ordinance including those related to
50 density, lot size, and bulk requirements.

1 (3) Given local land market conditions as of the date of the adoption of the
2 development transfer ordinance.

3 (d) All infrastructure necessary to support the development of the receiving zone
4 as set forth in the zoning ordinance shall either exist, or be scheduled to be provided, so that no
5 development requiring the purchase of transferable development potential shall be
6 unreasonably delayed because the necessary infrastructure will not be available due to any
7 action or inaction by the municipality.

8 (e) No density increases may be achieved in a receiving zone without the use of
9 appropriate instruments of transfer.

10 **SECTION 9.** Development Transfer Ordinance. (a) Except as otherwise provided
11 in this section, a development transfer ordinance shall provide that, on granting a variance that
12 increases the development potential of a parcel of property not in the designated receiving zone
13 for which the variance has been granted by more than five percent (5%), the parcel of property
14 shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall
15 apply with respect to the amount of development potential required to implement that variance.

16 (b) A development transfer ordinance shall provide for the issuance of such
17 instruments as may be necessary and the adoption of procedures for recording the permitted use
18 of the land at the time of the recording, the separation of the development potential from the
19 land, and the recording of the allowable residual use of the land upon separation of the
20 development potential.

21 (c) A development transfer ordinance shall specifically provide that, upon the
22 transfer of development potential from a sending zone, the owner of the property from which
23 the development potential has been transferred shall cause a statement, containing the
24 conditions of the transfer and the terms of the restrictions of the use and development of the
25 land, to be attached to and recorded with the deed of the land in the same manner as the deed
26 was originally recorded. These restrictions and conditions shall state that any development
27 inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon
28 the landowner and every successor in interest thereto.

29 (d) The restrictions shall be expressly enforceable by the municipality and the
30 county in which the property is located, or any interested party.

31 (e) All development potential transfers shall be recorded in the manner of a deed
32 in the book of deeds in the office of the county register of deeds. This recording shall specify
33 the lot and block number of the parcel in the sending zone from which the development
34 potential was transferred and the lot and block number of the parcel in the receiving zone to
35 which the development potential was transferred.

36 **SECTION 10.** Real Estate Market Analysis. (a) Prior to the final adoption of a
37 development transfer ordinance or any significant amendment to an existing development
38 transfer ordinance, the planning board or boards shall conduct a real estate market analysis of
39 the current and future land market, which examines the relationship between the development
40 rights anticipated to be generated in the sending zone and the likelihood of their utilization in
41 the designated receiving zone. The analysis shall include thorough consideration of the extent
42 of development projected for the receiving zone, and the likelihood of its achievement, given
43 current and projected market conditions in order to assure that the designated receiving zone
44 has the capacity to accommodate the development rights anticipated to be generated in the
45 sending zone. The real estate market analysis shall conform to rules and regulations adopted
46 pursuant to subsection (c) of this section.

47 (b) Upon completion of the real estate market analysis and at a meeting of the
48 county or municipal governing body or bodies, as appropriate, held prior to the meeting at
49 which the development transfer ordinance is introduced, the planning board shall hold a hearing
50 on the real estate market analysis.

1 **SECTION 11.** Submitting Development Transfer Ordinances. (a) Prior to adoption
2 of a development transfer ordinance or of any amendment of an existing development transfer
3 ordinance, the county or municipality shall submit a copy of the proposed ordinance, copies of
4 the development transfer and utility service plan elements of the county or municipal
5 comprehensive plan or plans, as appropriate, and capital improvement program, proposed
6 county or municipal comprehensive plan changes necessary for the enactment of the
7 development transfer ordinance, and the real estate market analysis to the municipal and county
8 planning board as appropriate for review and recommendation. If the ordinance and
9 comprehensive plan changes involve agricultural land, then the county agriculture development
10 board shall also be provided information identical to that provided to the county planning board
11 for its review and recommendation.

12 (b) The county or municipal planning board, upon receiving the proposed
13 development transfer ordinance and accompanying documentation, shall conduct a review of
14 the proposed ordinance with regard to the following criteria:

15 (1) Consistency with the adopted comprehensive plan of the county or
16 municipality.

17 (2) Support of county and municipal objectives for agricultural land
18 preservation, natural resource management and protection, historic or
19 architectural conservation, or the preservation of other public values as
20 enumerated in Section 7(a) of this act.

21 (3) Consistency with reasonable population and economic forecasts for the
22 county or municipality.

23 (4) Sufficiency of the receiving zone to accommodate the development potential
24 that may be transferred from sending zones and a reasonable assurance of
25 marketability of any instruments of transfer that may be created.

26 **SECTION 12.** Adopting and Reviewing Development Transfer Ordinances. (a)
27 Within 60 days after receiving a proposed development transfer ordinance and accompanying
28 documentation transmitted pursuant to Section 11 of this Act, the county or municipal planning
29 board, or both as appropriate, shall submit to the county or municipality formal comments
30 detailing its review and shall either recommend or not recommend enactment of the proposed
31 development transfer ordinance. If enactment of the proposed ordinance is recommended, the
32 county or municipality may proceed with adoption of the ordinance. Failure to submit
33 recommendations within the 60-day period shall constitute recommendation of the ordinance. If
34 the county or municipal planning board does not recommend enactment, the reasons shall be
35 clearly stated in the formal comments.

36 **SECTION 13.** Local and County Transfer of Development Rights Banks. (a) The
37 governing body of any municipality that has adopted a development transfer ordinance, or the
38 governing body of any county that has adopted a development transfer ordinance, may provide
39 for the purchase, sale, or exchange of the development potential that is available for transfer
40 from a sending zone by the establishment of a development transfer bank. Alternatively, the
41 governing body of any municipality, which has adopted a development transfer ordinance and
42 has not established a municipal development transfer bank, may utilize a county development
43 transfer bank for these purposes, provided that the county in which the municipality is situated
44 has established such a bank.

45 (b) Any development transfer bank established by a municipality or a county
46 shall be governed by a board of directors comprising five members appointed by the governing
47 body of the municipality or the county, as the case may be. The members shall have expertise
48 in either banking, law, land-use planning, natural resource protection, historic site preservation,
49 or agriculture. No current member of the governing board of the municipality or the county that
50 established the development transfer bank may serve on the board of directors of that bank. For

1 the purposes of this act, a purchase by the bank shall be considered an acquisition of lands for
2 public purposes.

3 (c) The powers of local and county transfer of development rights banks are as
4 follows:

5 (1) A development transfer bank may purchase property in a sending zone if
6 adequate funds have been provided for these purposes and the person from
7 whom the development potential is to be purchased demonstrates possession
8 of marketable title to the property, is legally empowered to restrict the use of
9 the property in conformance with this act, and certifies that the property is
10 not otherwise encumbered or transferred.

11 (2) The development transfer bank may, for the purposes of its own
12 development potential transactions, establish a county or municipal average
13 of the value of the development potential of all property in a sending zone of
14 a municipality within its jurisdiction, which value shall generally reflect
15 market value prior to the effective date of the development transfer
16 ordinance. The establishment of this county or municipal average shall not
17 prohibit the purchase of development potential for any price by private sale
18 or transfer, but shall be used only when the development transfer bank itself
19 is purchasing the development potential of property in the sending zone.
20 Several average values in any sending zone may be established for greater
21 accuracy of valuation.

22 (3) The development transfer bank may sell, exchange, or otherwise convey the
23 development potential of property that it has purchased or otherwise
24 acquired pursuant to the provisions of this act, but only in a manner that does
25 not substantially impair the private sale or transfer of development potential.

26 (4) A development transfer bank may apply for funds for the purchase of
27 development potential under the provisions of any act providing funds for
28 the purpose of acquiring and developing land for recreation and conservation
29 purposes consistent with the provisions and conditions of those acts.

30 (5) A development transfer bank may apply for matching funds for the purchase
31 of development potential under the provisions of any applicable State law
32 for the purpose of farmland preservation and agricultural development
33 consistent with the provisions and conditions of that law.

34 **SECTION 14.** This act applies to Chatham County only, to municipalities located
35 wholly in that county, and in the case of a municipality located partly within Chatham County,
36 to the part within Chatham County.

37 **SECTION 15.** This act is effective when it becomes law.