

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE BILL 547**

Short Title: Chatham TDR. (Local)

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Sponsors: Senator Atwater.

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Referred to: State and Local Government.

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March 12, 2009

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

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

- 28 (1) "Capital improvement" means a governmental acquisition of real property or  
29 major construction project.  
30 (2) "Development" means the division of a parcel of land into two or more  
31 parcels; or the construction, reconstruction, conversion, structural alteration,  
32 relocation, or enlargement of any building or other structure, or of any  
33 mining excavation or landfill; or any use or change in the use of any building  
34 or other structure, or land or extension of use of land, for which permission  
35 may be required pursuant to this act.  
36 (3) "Development potential" means the maximum number of dwelling units or  
37 square feet of nonresidential floor area that may be constructed on a



1 specified lot or in a specified zone under the comprehensive plan and land-  
2 use regulations in effect on the date of the adoption of the development  
3 transfer ordinance, and in accordance with recognized environmental  
4 constraints.

5 (4) "Development transfer" means the conveyance of development potential, or  
6 the permission for development, from one or more lots to one or more other  
7 lots by deed, easement, or other means as authorized by ordinance adopted  
8 pursuant to law.

9 (5) "Development transfer bank" refers to a bank established pursuant to this act  
10 responsible for authorizing, overseeing, and evaluating development  
11 transfers.

12 (6) "Municipality" means any city, town, or village, located wholly or partly  
13 within Chatham County, that exercises planning jurisdiction under Article 19  
14 of Chapter 160A of the General Statutes.

15 (7) "Receiving zone" means an area or areas designated in a comprehensive plan  
16 or plans and a zoning ordinance or ordinances, within which development  
17 may be increased, and which is otherwise consistent with the provisions of  
18 Section 8 of this act.

19 (9) "Sending zone" means an area or areas designated in a comprehensive plan  
20 and zoning ordinance, within which development may be restricted, and  
21 which is otherwise consistent with the provisions of Section 7 of this act.

22 (10) "Variance" means permission granted by local governments to depart from  
23 the literal requirements of a zoning ordinance.

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

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

36 (1) Adopt a development transfer plan element of its comprehensive plan in  
37 accordance with the requirements of Section 6 of this act.

38 (2) Adopt a capital improvement program for the receiving zone, which includes  
39 the location and cost of all infrastructure and a method of cost sharing if any  
40 portion of the cost is to be assessed against developers.

41 (3) Adopt a utility service plan element of the comprehensive plan that  
42 specifically addresses providing necessary utility services within any  
43 designated receiving zone within a specified time period so that no  
44 development seeking to utilize development potential transfer is  
45 unreasonably delayed because utility services are not available.

46 (4) Prepare a real estate market analysis pursuant to Section 10 of this act, which  
47 examines the relationship between the development rights anticipated to be  
48 generated in the sending zones and the capacity of designated receiving  
49 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.