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LOCAL GOVERNMENT

Transfer of Development Rights: Revise Procedures Relating to Transfer of Development Rights by Eliminating the Requirement of Approval by the Local Governing Authority Prior to the Sale of the TDRs; Include Marsh Hammocks as an Appropriate Sending Area

CODE SECTIONS:	O.C.G.A. §§ 36-66A-1 to -2 (amended)
BILL NUMBER:	SB 86
ACT NUMBER:	378
GEORGIA LAWS:	2003 Ga. Laws 859
SUMMARY:	The Act revises procedures relating to the transfer of development rights by allowing developers and transferable development rights owners to privately negotiate the sale of transferable development rights without requiring a separate hearing by the local governing authority, provided the transaction complies with the local transferable development rights ordinance. The Act applies to all of Georgia's 159 counties. The Act also provides for the addition of marsh hammocks as appropriate sending areas.
EFFECTIVE DATE:	June 4, 2003

History

The Georgia General Assembly passed the Georgia Transferable Development Rights ("TDR") law in 1998, amending Georgia Code Title 36 by adding new Chapter 66A.¹ The original TDR law outlined the provisions and specifications that county and city governments must adhere to when passing local TDR ordinances.² When a county

1. See 1998 Ga. Laws 1678, §§ 1-2, at 1678 (formerly found at O.C.G.A. §§ 36-66A-1 to -2 (2000)).

2. See *id.*; Electronic Mail Interview with Dan Reuter, AICP, Land Use Division Chief, Atlanta Regional Commission (May 14, 2003) [hereinafter Reuter Interview].

designed a TDR ordinance, the county would hold open meetings to obtain public input in designating the sending and the receiving areas.³ After the ordinance passed, the prior law required an additional approval step before landowners and developers could buy and sell the TDRs.⁴ In 2001, the General Assembly amended Code sections 33-66A-1 and 33-66A-2.⁵ The 2001 amendments permitted local consolidated governments to eliminate the requirement that the local governing authority give prior approval to the TDR sales.⁶

Senator Ralph Hudgens of the 47th district authored SB 86.⁷ He and the bill's other sponsors proposed SB 86 to amend Code sections 33-66A-1 and 33-66A-2 to grant all 159 counties, as well as municipal governments, the same discretion in implementing TDR programs as the General Assembly granted to local consolidated governments by the 2001 amendment.⁸ They also proposed SB 86 to include (1) wetlands, (2) groundwater recharge areas, and (3) marsh hammocks as possible sending areas to help preserve these areas.⁹ Furthermore, the Act eliminates the duplicative hearing requirement mandated by the prior law and provides that once a jurisdiction enacts a TDR ordinance and holds hearings, the exchange of development rights is a market transaction.¹⁰

The Association of County Commissioners ("ACCG") supported SB 86 for several reasons. The bill offers the same TDR ordinance and planning options to all of the ACCG's members, which includes

3. See Telephone Interview with Glenn Dowling, Associate Legislative Director, Association of County Commissioners of Georgia (May 16, 2003) [hereinafter Dowling Interview]. Sending areas are zones or areas that "will export development potential" and "should be identified as areas for limited development within the context of a comprehensive plan." Possible reasons for designating an area as a sending zone may include "habitat preservation, wetland protection, erosion control, protection of historic resources, and agricultural land retention." Receiving areas are "regions set aside by the regulating jurisdiction to accept development potential from restricted land elsewhere in the jurisdiction. To maintain a market for the TDRs in the sending zone, receiving zones must be growing areas with a market demand for increased density." Julian Conrad Jurgensmeyer, *Transferable Development Rights and Alternatives After Suitum*, 30 URB. LAW. 441, 446-47 (1998).

4. See Dowling Interview, *supra* note 3.

5. See 2001 Ga. Laws 1219, §§ 2-3, at 1220-21 (formerly found at O.C.G.A. §§ 33-66A-1 to -2 (Supp. 2002)).

6. See 2001 Ga. Laws 1219, § 3, at 1221 (formerly found at O.C.G.A. § 33-66A-2 (Supp. 2002)).

7. See Dowling Interview, *supra* note 3; SB 86, as introduced, 2003 Ga. Gen. Assem.

8. See Audio Recording of House Proceedings, Apr. 22, 2003 (remarks by Rep. Nick Moraitakis), at <http://www.georgia.gov/services/leg/audio/2003archive>.

9. See Audio Recording of Senate Proceedings, Mar. 3, 2003 (remarks by Sen. Ralph Hudgens), at <http://www.georgia.gov/services/leg/audio/2003archive> [hereinafter Senate Audio].

10. See Reuter Interview, *supra* note 2; see generally Senate Audio, *supra* note 9 (remarks by Sen. Ralph Hudgens). This bill resembles other states' law. See Senate Audio, *supra* note 9 (remarks by Sen. Ralph Hudgens) ("This type of program has worked well in Maryland and Kansas.").

all 159 counties, and not just the consolidated county governments previously covered by the law.¹¹ The ACCG also supported the bill because it saw SB 86 as a great management tool to facilitate counties with growth and planning.¹² Additionally, the bill saves money by “encouraging density close to existing infrastructure.”¹³ For example, counties who enact a TDR ordinance that increases development near existing infrastructure may save money by potentially avoiding constructing new water and sewer lines in rural areas.¹⁴

The Chattahoochee Hill Country Alliance and its leader Steve Nygren also supported the legislation.¹⁵ Mr. Nygren cites a host of reasons as to why he and the Chattahoochee Hill Country Alliance support the TDRs.¹⁶ Mr. Nygren hopes the new Fulton County TDR¹⁷ ordinance will encourage “landowners to sell development rights and preserve their properties, instead of selling out to the highest bidder.”¹⁸ Further, Mr. Nygren states that the TDRs “will benefit particularly small landowners and aging farmers, because they get to profit from their land and stay there as long as they live.”¹⁹

Aside from granting all 159 Georgia counties the discretion to pass TDR ordinances, the Act also provides for the addition of wetlands, groundwater recharge areas, and marsh hammocks as appropriate sending areas.²⁰ The Act’s two provisions work to “preserve green spaces” and maintain the environment.²¹

11. See Dowling Interview, *supra* note 3.

12. See *id.*

13. *Id.*

14. *Id.*

15. See Reuter Interview, *supra* note 2. Chattahoochee Hill Country, in southern Fulton County, is an area of 60,000 acres of rangeland “now full of grazing cattle.” See Charles Yoo, *Fulton OKs Sale of Development Rights*, ATLANTA J. CONST., Apr. 3, 2003, at D1.

16. See Yoo, *supra* note 15.

17. The Fulton County Board of Commissioners unanimously passed a TDR ordinance in early April 2003 that became operative upon the General Assembly’s passage of the Act. See Dowling Interview, *supra* note 3.

18. *Id.*

19. *Id.*

20. See Senate Audio, *supra* note 9.

21. See *id.*; Dowling Interview, *supra* note 3.

SB 86

Senators Ralph Hudgens of the 47th district, Sam Zamarripa of the 36th district, Kasim Reed of the 35th district, and Brian Kemp of the 46th district sponsored SB 86.²² SB 86 was introduced on the Senate floor on February 3, 2003, and was assigned to the Senate Judiciary Committee, which favorably reported the bill on February 27, 2003.²³ Senator Connie Stokes of the 43rd district offered two floor amendments, both of which she withdrew during floor discussion on March 3, 2003.²⁴ Senator Stokes then introduced a third amendment that retained the language stating that “[a]ny 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.”²⁵ Senator Stokes’ third amendment provided for changing the minimum amount of time to publish notice in the newspaper from 15 days to 30 days prior to a TDR hearing.²⁶ The amendment also provided that “[s]ubject property owners shall be notified by certified mail.”²⁷ Senator Stokes was concerned that the original bill’s notice requirements were insufficient.²⁸

Senator Hudgens asserted that although the original bill did not require signs, it did provide “notice of the hearing.”²⁹ Senator Hudgens used Chattahoochee Hills to demonstrate how the amendment could cause “an undue burden on the government when [the government would have] to notify the property owners in the affected area.”³⁰ Senator Stokes’ third proposed amendment failed by a vote of 16 to 32.³¹

Senator Stokes questioned whether SB 86 circumvented zoning laws.³² Senator Charles Clay of the 37th district responded that SB 86 “does not change the requirement for zoning” as it merely dictates a procedure “if a county or city chooses to adopt an ordinance allowing

22. See SB 86, as introduced, 2003 Ga. Gen. Assem.

23. See State of Georgia Final Composite Status Sheet, SB 86, Apr. 25, 2003.

24. See Senate Audio, *supra* note 9 (remarks by Sen. Connie Stokes).

25. See Failed Senate Floor Amendment to SB 86, introduced by Sen. Connie Stokes, Mar. 3, 2003.

26. *Id.*

27. *Id.*

28. See Senate Audio, *supra* note 9 (remarks by Sen. Connie Stokes).

29. See *id.* (remarks by Sen. Ralph Hudgens).

30. *Id.*

31. See Georgia Senate Voting Record, SB 86 (Mar. 3, 2003).

32. See Senate Audio, *supra* note 9 (remarks by Sen. Connie Stokes).

transfer of [TDRs].”³³ Another Senator asked whether SB 86 infringed on property rights.³⁴ Senator Hudgens replied that SB 86 did not affect property rights because the TDR transfers are voluntary.³⁵ SB 86 ultimately passed the Senate on March 3, 2003, by a vote of 48 to 2.³⁶

SB 86 was first introduced in the House on March 4, 2003, and the Speaker assigned it to the House Judiciary Committee.³⁷ The House Committee favorably reported the bill on April 14, 2003, and the House passed SB 86 without amendment on April 22, 2003, by a vote of 155 to 0.³⁸ On June 4, 2003, Governor Sonny Perdue signed SB 86 into law.³⁹

The Act

Section 1 of the Act strikes existing Code section 36-66A-1 and replaces it with new Code section 36-66A-1.⁴⁰ New Code subsection 36-66A-1(6) designates wetlands, groundwater recharge areas, and marsh hammocks as appropriate sending areas.⁴¹ Section 1 of the Act also strikes existing Code section 36-66A-2 and replaces it with new Code section 36-66A-2.⁴² The Act strikes the language eliminating the separate hearing requirement for only consolidated governments and also strikes the language requiring a separate hearing for all other local governing authorities.⁴³ The Act also eliminates any signage

33. *See id.* (remarks by Sen. Charles Clay).

34. *See id.*

35. *See id.* (remarks by Sen. Ralph Hudgens). *See generally* Interview with Sen. Sam Zamarripa, Senate District No. 36 (Mar. 27, 2003) [hereinafter *Zamarripa Interview*]. Senator Zamarripa stated that SB 86 provided for voluntary TDR programs to avoid a takings issue. *Zamarripa Interview*.

36. *See Georgia Senate Voting Record*, SB 86 (Mar. 3, 2003).

37. *See State of Georgia Final Composite Status Sheet*, SB 86, Apr. 25, 2003.

38. *Id.*; *see Georgia House of Representatives Voting Record*, SB 86 (Apr. 22, 2003).

39. *See* 2003 Ga. Laws 859, § 3, at 861.

40. *Compare* 2001 Ga. Laws 1220, § 2, at 1220-21 (formerly found at O.C.G.A. § 36-66A-1 (Supp. 2002)), *with* O.C.G.A. § 36-66A-1 (Supp. 2003).

41. *Compare* 2001 Ga. Laws 1220, § 2, at 1220-21 (formerly found at O.C.G.A. § 36-66A-1(6) (Supp. 2002)), *with* O.C.G.A. § 36-66A-1(6) (Supp. 2003).

42. *Compare* 2001 Ga. Laws 1220, § 3, at 1221-22 (formerly found at O.C.G.A. § 36-66A-2 (Supp. 2002)), *with* O.C.G.A. § 36-66A-2 (Supp. 2003).

43. *Compare* 2001 Ga. Laws 1220, § 3, at 1221-22 (formerly found at O.C.G.A. § 36-66A-2(b) (Supp. 2002)), *with* O.C.G.A. § 36-66A-2(b) (Supp. 2003).

requirement and deletes language referring to the former separate hearing requirement from Code paragraph 36-66A-2(d)(1).⁴⁴

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44. Compare 2001 Ga. Laws 1220, § 3, at 1221-22 (formerly found at O.C.G.A. § 36-66A-2(d)(1) (Supp. 2002)), with O.C.G.A. § 36-66A-2(d)(1) (Supp. 2003).