

097812338

## SENATE BILL NO. 1418

Offered January 14, 2009

A BILL to allow Fauquier County to enact an ordinance for the transfer and severance of development rights.

Patrons—Vogel and Stuart; Delegate: Cole

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

1. § 1. Notwithstanding the provisions of Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia, the provisions of this act shall apply to Fauquier County.

§ 2. Definitions.

As used in this act, the term:

"Development rights" or "transferable development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance.

"Receiving area" means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights affixed to the property. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the development rights being transferred and affixed thereto. Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.

"Sending area" means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be severed and transferred to a receiving area.

"Sending property" means a lot or parcel within a sending area from which development rights are authorized by the ordinance to be severed.

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights are conveyed to one or more parties, or transferred to become affixed to one or more receiving properties, pursuant to this act.

§ 3. Fauquier County may provide for transfer of development rights.

A. Pursuant to the provisions of this act, the governing body of Fauquier 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 and severance of development rights within its jurisdiction. The county shall give notice and hold a public hearing in accordance with § 15.2-2204 of the Code of Virginia prior to approval by the governing body.

B. Fauquier County may not require property owners to transfer development rights as a condition of the development of any property. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties. However, if a property in the receiving area does not have sufficient development rights for the proposed development at the time an application for development is submitted by the owner of a receiving property, the owner of said receiving property may accept development rights from a sending property pursuant to this act.

C. In accordance with implementing the provisions of this act, Fauquier County shall adopt an ordinance and shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and lienholders of such property owners, if any. The instruments shall identify the development rights being severed and the sending properties or receiving properties, as applicable;

2. 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;

- 59 3. The severance of transferable development rights from the sending property;  
60 4. The purchase, sale, exchange, or other conveyance of transferable development rights, after  
61 severance and prior to the rights being affixed to a receiving property;  
62 5. A system for monitoring the severance, ownership, assignment, and transfer of transferable  
63 development rights;  
64 6. A map or other description of areas designated as sending and receiving areas for the transfer of  
65 development rights between properties;  
66 7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving  
67 properties;  
68 8. Permitted uses and the maximum increases in density in the receiving area;  
69 9. The minimum acreage of a sending property and the minimum reduction in density of the sending  
70 property that may be conveyed in severance or transfer of development rights;  
71 10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to  
72 accept increases in density and its plans to provide necessary utility services within any designated  
73 receiving area;  
74 11. The review of an application to transfer development rights by the planning commission or its  
75 agent to determine whether the application complies with the provisions of the ordinance. The  
76 application shall be deemed approved upon the determination of compliance with the ordinance and  
77 upon recordation of the instrument in the land records of the office of the circuit court clerk for the  
78 locality that transfers and affixes development rights to one or more receiving properties; and  
79 12. Such other provisions as the locality deems necessary to aid in the implementation of the  
80 provisions of this act.
- 81 D. The ordinance may provide for the allowance for residential density to be converted to an  
82 increase in the square feet of a commercial, industrial, or other use on the receiving property.
- 83 E. Development rights severed pursuant to this act shall be interests in real property and shall be  
84 considered as such for purposes of conveyance and taxation. Once a deed for transferable development  
85 rights, created pursuant to this act, has been recorded in the land records of the office of the circuit  
86 court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise  
87 transferred by the owner of the sending property, the development rights shall vest in the grantee and  
88 may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to  
89 prevent the owner of the sending property from recording a deed covenant against the sending property  
90 severing the development rights on said property, with the owner of the sending property retaining  
91 ownership of the severed development rights. Any transfer of the development rights to a different  
92 property in a receiving area shall be subject to review pursuant to the provisions of the ordinance  
93 adopted pursuant to subdivision C 11.
- 94 F. For the purposes of ad valorem real property taxation, the value of a transferable development  
95 right shall be deemed appurtenant to the sending property until the transferable development right is  
96 severed from and recorded as a distinct interest in real property, or the transferable development right  
97 is used at a receiving property and becomes appurtenant thereto. Once a transferable development right  
98 is severed from the sending property, the assessment of the fee interest in the sending property shall  
99 reflect any change in the fair market value that results from the inability of the owner of the fee interest  
100 to use such property for such uses terminated by the severance of the transferable development right.  
101 Upon severance from the sending property and recordation as a distinct interest in real property, the  
102 transferable development right shall be assessed at its fair market value on a separate real estate tax  
103 bill sent to the owner of said development right as taxable real estate in accordance with Article 1  
104 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58 of the Code of Virginia.
- 105 G. Severance of development rights shall become effective upon the recording of the conveyance and  
106 submittal of a certified copy of such recording to the local assessor. Transfers of development rights,  
107 approved by the County to be affixed to one or more receiving properties, shall become effective upon  
108 the recording of the conveyance.
- 109 H. Fauquier County shall incorporate the map identified in subdivision C 6 into the comprehensive  
110 plan.
- 111 I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with  
112 respect to the zoning district applicable thereto initiated by the governing body, which eliminate,  
113 materially restrict, or reduce the uses, or the density of use permitted in the zoning district applicable to  
114 any receiving properties to which development rights have been transferred and affixed thereto, shall be  
115 effective with respect to such property unless there has been mistake, fraud, or a change in  
116 circumstances substantially affecting the public health, safety, or welfare.
- 117 J. In adopting an ordinance pursuant to this act, Fauquier County may designate eligible receiving  
118 areas in any incorporated town within such county, if the governing body of the town has also amended  
119 its zoning ordinance to designate the same areas as eligible to receive density being transferred from  
120 sending areas in the county.

121 K. Fauquier County and an adjacent city may enter voluntarily into an agreement to permit the  
122 county to designate eligible receiving areas in the city if the governing body of the city has also  
123 amended its zoning ordinance to designate the same areas as eligible to receive density being  
124 transferred from sending areas in the county. The city council shall designate areas it deems suitable as  
125 receiving areas and shall designate the maximum increases in density in each such receiving area.  
126 However, if any such agreement contains any provision addressing any issue provided for in Chapter 32  
127 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39  
128 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.) of Title 15.2 of the Code of Virginia, the agreement  
129 shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et  
130 seq.) of Title 15.2 of the Code of Virginia.

131 1. The terms and conditions of the density transfer agreement as provided in this subsection shall be  
132 determined by the affected localities and shall be approved by the governing body of each locality  
133 participating in the agreement, provided the governing body of each such locality first holds a public  
134 hearing, which shall be advertised once a week for two successive weeks in a newspaper of general  
135 circulation in the locality.

136 2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the  
137 localities for an order affirming the proposed agreement. The circuit court shall be limited in its  
138 decision to either affirm or deny the agreement and shall have no authority, without the express  
139 approval of each local governing body, to amend or change the terms or conditions of the agreement,  
140 but shall have the authority to validate the agreement and give it full force and effect. The circuit court  
141 shall affirm the agreement unless the court finds either that the agreement is contrary to the best  
142 interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

143 3. The agreement shall not become binding on the localities until affirmed by the court under this  
144 subsection. Once approved by the circuit court, the agreement shall also bind future local governing  
145 bodies of the localities.

146 2. That the provisions of this act shall expire on July 1, 2012, if Fauquier County has not enacted  
147 an ordinance for the transfer of development rights as described in this act prior to that time.  
148 Further, that the provisions of this act shall not become effective unless or until Fauquier County  
149 adopts an ordinance pursuant to this chapter.