

## **NAHB |South Carolina HB 4996 |Transferable Development Rights | Bill Analysis**

**House Bill 4996** amends the South Carolina Code of Laws by adding section 6-29-725 to permit the transfer of development rights.

If this legislation passes it will allow the transfer of development rights (TDR) for a landowner looking to sell or transfer the development rights of their property to another location that in many cases is in the same municipality.

### **BACKGROUND**

Historically, the first transfer of development rights was passed as part of the First American Zoning Ordinance in 1916 in New York City. Later, in 1968, it was amended to allow transfers between properties from several blocks away from each other.<sup>1</sup> Transfer of Development Rights (TDR) has been a land use planning tool for years. They allow property owners in designated “sending areas” to sell their unused development rights to developers in “receiving areas.” The area designations, allows for higher-density developments in preferred locations while preserving sensitive land.<sup>2</sup>

Transfer of Development Rights can be a useful tool for the conservation and efficiency of land. For example, TDRs can help conserve farmland, wetlands, and historically significant marked locations. On the flip side, it can be limited and not suitable for all development projects, may contain high transfer costs, and may face community opposition.

While TDRs are considered a land-use planning tool, not a lot of states or cities have implemented them legislatively. The implementation of a TDR is challenging due to market acceptance and the valuation of the development rights.<sup>3</sup>

---

<sup>1</sup> [http://mildredwarner.org/www.mildredwarner.org/gov-restructuring/privatization/tdr.html#:~:text=The%20new%20zoning%20ordinance%20set,Department%20of%20Planning%2C%202002\).&text=The%20idea%20of%20transferring%20development,proved%20to%20be%20no%20exception.](http://mildredwarner.org/www.mildredwarner.org/gov-restructuring/privatization/tdr.html#:~:text=The%20new%20zoning%20ordinance%20set,Department%20of%20Planning%2C%202002).&text=The%20idea%20of%20transferring%20development,proved%20to%20be%20no%20exception.)

<sup>2</sup>

[https://www.planning.org/publications/document/9150345/#:~:text=Transfer%20of%20development%20rights%20\(TDR,implementing%20a%20new%20TDR%20program.](https://www.planning.org/publications/document/9150345/#:~:text=Transfer%20of%20development%20rights%20(TDR,implementing%20a%20new%20TDR%20program.)

<sup>3</sup> <https://www.georgetownclimate.org/adaptation/toolkits/managed-retreat-toolkit/transfer-of-development-rights.html>

## **THIS BILL**

**House Bill 4996** if passed in the state of South Carolina will amend the South Carolina code of the laws by adding section 6-29-725 that allows the transfer of development rights in the state. It further lays out the requirements.

### **The new section 6-29-725 will do the following:**

- Creates a voluntary transfer of development rights permitted on one parcel of land to another parcel of land.
- It will restrict or prohibit further development of the parcel from which development rights are transferred (the sending property).
- It will restrict or prohibit the increase of density or intensity of development of the parcel to which such rights are transferred (the receiving property).
- Requests the locality or the local governing authority to designate and show on the zoning map sending areas from which development rights may be transferred and receiving areas to which such rights may be transferred and used for development.
- The local governing authority will designate these zones as a special use district or as overlaying other zoning districts.
- The ordinance assures that the prohibition against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner.
- The ordinance provides for the severance of transferable development rights from the sending property and the immediate or delayed transfer of development rights to a receiving property.
- Enable the purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property.
- Assurance of the rights of the municipality or county to purchase development rights and to hold them for conservation purposes or resale.
  - Assure the right of a person to purchase development rights and to hold them for conservation purposes and include such other provisions as the local governing authority deems necessary to aid in the implementation of this section.
- Allows two or more local governing authorities to enter into intergovernmental agreements to enact interdependent ordinances providing for the transfer of development rights between or among jurisdictions.

## **ARGUMENTS in SUPPORT**

HB 4996 provides another development tool to allow more housing to be built in the community. Since the program's inception, the transfer of development rights has allowed homeowners and property owners to own property and potentially make capital during the transfer or sale.

Further, the transfer of development rights can be beneficial to the environment. TDRs can assist builders and developers in addressing some of the community members' concerns about development in an environmental area that community members may oppose. Instead, TDRs allow for the developer to move construction to a more desirable location. In addition, farms and ranches can also be preserved in rural areas and urban areas, and community members will benefit from the sensitive area by potentially transforming the space into parks with various amenities, such as trails, that attract new members to the community.

TDRs can provide builders and developers with a competitive advantage due to the flexibility in project design, which allows for more unique features and amenities in buildings that can attract potential buyers and renters and generate a higher return on investment.

Additionally, TDRs can allow developers to build at higher densities that may be permitted by base zoning regulations in the designed receiving areas. For developers, TDRs provide a simple solution when they can't fully develop one part of the land or cannot build to a certain height. In cases like this, if a building is subject to lower height restrictions in the locality or the area where the project is occurring, the owner might be able to use the unused "airspace" from one project to another nearby that may not have the same lower height restrictions.

## **ARGUMENTS in OPPOSITION**

TDRs can increase the cost of housing. While the price of TDRs varies from location, it can be costly for the builder, in addition to purchasing land and the actual construction. The builder will most likely pass down the expense to the home buyer.

In addition, TDR programs can be complex for local governments to design, implement, and, in most cases, administer. Generally, TDRs include heavy regulations and record-keeping that can be timely and costly to the developer. Further, a recent study by Resources for the Future found that how communities have designed and implemented their transfer of development programs has been set up for failure.<sup>4</sup>

---

<sup>4</sup> <https://legal-planet.org/2013/01/07/the-trouble-with-tdrs/>

Also, TDRs opens the door for NIMBYism and individuals to push back on the argument that the program creates more density, places a strain on infrastructure, and pushes for more growth. For example, in cities like New York City, the area zoned for maximum density limit is R10 which signifies a maximum allowable floor area ratio (FAR) of 10 floors. Depending on the lot size that a developer owns and is working to develop, under a TDR, they can now build more floors on that lot, which in return will create congestion.

Finally, the actual impact of the TDRs program is based on the specific market; it can add more costs for a developer to conduct market research or study how the purchase or transfer of TDRs can impact their project, which will create a cost price tag which will eventually be passed down to the buyer or renter.

## **SIMILAR LEGISLATION/LAWS**

- [New York City, New York](#)
- [Montgomery County, Maryland](#)
- [King County, Washington](#)
- [State of Virginia Article 7.1](#)

## **COURT CASES**

[Penn vs. City of New York, 1978](#)

## **POTENTIAL SUPPORT**

North Carolina Home Builders Association, South Carolina Realtors Association; South Carolina Chamber of Commerce; Palmetto YIMBY; Municipal Association of South Carolina

## **POTENTIAL OPPOSITION**

NIMBY groups; Sierra Club; South Carolina Conservation Coalition; Coastal Conservation League.