

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 386  
State and Local Government Committee Substitute Adopted 6/1/05

Short Title: Cabarrus Build/Develop/Annex Changes.

(Local)

Sponsors:

Referred to:

March 7, 2005

A BILL TO BE ENTITLED

AN ACT ALLOWING THE DESIGN-BUILD METHOD OF CONSTRUCTION FOR  
A JAIL, ANCILLARY JAIL, AND TEMPORARY FACILITY IN CABARRUS  
COUNTY, AUTHORIZING CABARRUS COUNTY AND THE  
MUNICIPALITIES LOCATED IN WHOLE OR IN PART IN CABARRUS  
COUNTY TO ENTER INTO DEVELOPMENT AGREEMENTS WITH  
DEVELOPERS, AND TO EXTEND A MORATORIUM ON ANNEXATIONS  
INTO THE COUNTY OF CABARRUS BY MUNICIPALITIES LOCATED  
PRIMARILY OUTSIDE THE COUNTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** Notwithstanding G.S. 143-128, 143-129, and 143-132,  
Cabarrus County may use the design-build method of construction for the construction  
of a jail, ancillary jail, and temporary facility at the intersection of Union Street and  
Corban Avenue in the City of Concord. No contract under this act shall be entered into  
after June 30, 2008.

**SECTION 2.** Article 19 of Chapter 160A of the General Statutes is amended  
by adding a new Part to read:

"Part 3D. Development Agreements.

**§ 160A-400.20. Authorization for development agreements.**

(a) The General Assembly finds:

- (1) Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.
- (2) Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.
- (3) Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning,

1 financing, and construction schedules and the phasing of the private  
2 development.

3 (4) Because of their scale and duration, such large-scale projects involve  
4 substantial commitments of private capital by developers, which  
5 developers are usually unwilling to risk without sufficient assurances  
6 that development standards will remain stable through the extended  
7 period of the development.

8 (5) Because of their size and duration, such developments often permit  
9 communities and developers to experiment with different or  
10 nontraditional types of development concepts and standards, while still  
11 managing impacts on the surrounding areas.

12 (6) To better structure and manage development approvals for such large-  
13 scale developments and ensure their proper integration into local  
14 capital facilities programs, local governments need the flexibility in  
15 negotiating such developments.

16 (b) Local governments and agencies may enter into development agreements  
17 with developers, subject to the procedures and requirements of this Part. In entering into  
18 such agreements, a city may not exercise any authority or make any commitment not  
19 authorized by general or local act.

20 (c) This Part is supplemental to the powers conferred upon local governments  
21 and does not preclude or supersede rights and obligations established pursuant to other  
22 law regarding building permits, site-specific development plans, phased development  
23 plans, or other provisions of law.

24 **"§ 160A-400.21. Definitions.**

25 The following definitions apply in this Part:

26 (1) Comprehensive plan. – The comprehensive plan, land-use plan, small  
27 area plans, neighborhood plans, transportation plan, capital  
28 improvement plan, official map, and any other plans regarding land  
29 use and development that have been officially adopted by the  
30 governing board.

31 (2) Developer. – A person, including a governmental agency or  
32 redevelopment authority, who intends to undertake any development  
33 and who has a legal or equitable interest in the property to be  
34 developed.

35 (3) Development. – The planning for or carrying out of a building activity,  
36 the making of a material change in the use or appearance of any  
37 structure or property, or the dividing of land into two or more parcels.  
38 'Development', as designated in a law or development permit, includes  
39 the planning for and all other activity customarily associated with it  
40 unless otherwise specified. When appropriate to the context,  
41 'development' refers to the planning for or the act of developing or to  
42 the result of development. Reference to a specific operation is not  
43 intended to mean that the operation or activity, when part of other

- 1                    operations or activities, is not development. Reference to particular  
2                    operations is not intended to limit the generality of this item.
- 3                    (4)                Development permit. – A building permit, zoning permit, subdivision  
4                    approval, special or conditional use permit, variance, or any other  
5                    official action of local government having the effect of permitting the  
6                    development of property.
- 7                    (5)                Governing body. – The city council of a municipality or the board of  
8                    county commissioners of a county.
- 9                    (6)                Land development regulations. – Ordinances and regulations enacted  
10                   by the appropriate governing body for the regulation of any aspect of  
11                   development and includes zoning, subdivision, or any other land  
12                   development ordinances.
- 13                   (7)                Laws. – All ordinances, resolutions, regulations, comprehensive plans,  
14                   land development regulations, policies, and rules adopted by a local  
15                   government affecting the development of property, and includes laws  
16                   governing permitted uses of the property, density, design, and  
17                   improvements.
- 18                   (8)                Property. – All real property subject to land-use regulation by a local  
19                   government and includes any improvements or structures customarily  
20                   regarded as a part of real property.
- 21                   (9)                Local government. – Any municipality or county that exercises  
22                   regulatory authority over and grants development permits for land  
23                   development or which provides public facilities.
- 24                   (10)              Local planning board. – Any planning board established pursuant to  
25                   G.S. 160A-361 or G.S. 153A-321.
- 26                   (11)              Person. – An individual, corporation, business or land trust, estate,  
27                   trust, partnership, association, two or more persons having a joint or  
28                   common interest, State agency, or any legal entity.
- 29                   (12)              Public facilities. – Major capital improvements, including, but not  
30                   limited to, transportation, sanitary sewer, solid waste, drainage, potable  
31                   water, educational, parks and recreational, and health systems and  
32                   facilities.

33                   **"§ 160A-400.22. Local governments authorized to enter into development**  
34                   **agreements; approval of county or municipal governing body required.**

35                   A local government may establish procedures and requirements, as provided in this  
36                   Part, to consider and enter into development agreements with developers. A  
37                   development agreement must be approved by the governing body of a county or  
38                   municipality by ordinance.

39                   **"§ 160A-400.23. Developed property must contain certain number of acres;**  
40                   **permissible durations of agreements.**

41                   A local government may enter into a development agreement with a developer for  
42                   the development of property as provided in this Part, provided the property contains 25  
43                   acres or more of developable property (exclusive of wetlands, mandatory buffers, steep  
44                   slopes, and other portions of the property precluded from development at the time of

1 application). Development agreements shall be of a term specified in the agreement,  
2 provided they may not be for a term exceeding 20 years.

3 **"§ 160A-400.24. Public hearing.**

4 Before entering into a development agreement, a local government shall conduct a  
5 public hearing on the proposed agreement following the procedures set forth in  
6 G.S. 160A-364 or G.S. 153A-323 regarding zoning ordinance adoption or property  
7 subject to the development agreement, the development uses proposed on the property,  
8 and must specify a place where a copy of the proposed development agreement can be  
9 obtained. In the event that the development agreement provides that the local  
10 government shall provide certain public facilities, the development agreement shall  
11 provide that the delivery date of such public facilities will be tied to successful  
12 performance by the developer in implementing the proposed development (such as  
13 meeting defined completion percentages or other performance standards).

14 **"§ 160A-400.25. What development agreement must provide; what it may provide;  
15 major modification requires public notice and hearing.**

16 (a) A development agreement shall at a minimum include all of the following:

- 17 (1) A legal description of the property subject to the agreement and the  
18 names of its legal and equitable property owners.
- 19 (2) The duration of the agreement. However, the parties are not precluded  
20 from entering into subsequent development agreements that may  
21 extend the original duration period.
- 22 (3) The development uses permitted on the property, including population  
23 densities and building types, intensities, placement on the site, and  
24 design.
- 25 (4) A description of public facilities that will service the development,  
26 including who provides the facilities, the date any new public  
27 facilities, if needed, will be constructed, and a schedule to assure  
28 public facilities are available concurrent with the impacts of the  
29 development.
- 30 (5) A description, where appropriate, of any reservation or dedication of  
31 land for public purposes and any provisions to protect environmentally  
32 sensitive property.
- 33 (6) A description of all local development permits approved or needed to  
34 be approved for the development of the property together with a  
35 statement indicating that the failure of the agreement to address a  
36 particular permit, condition, term, or restriction does not relieve the  
37 developer of the necessity of complying with the law governing their  
38 permitting requirements, conditions, terms, or restriction.
- 39 (7) A description of any conditions, terms, restrictions, or other  
40 requirements determined to be necessary by the local government for  
41 the public health, safety, or welfare of its citizens.
- 42 (8) A description, where appropriate, of any provisions for the  
43 preservation and restoration of historic structures.

1 (b) A development agreement may provide that the entire development or any  
2 phase of it be commenced or completed within a specified period of time. The  
3 development agreement must provide a development schedule including  
4 commencement dates and interim completion dates at no greater than five-year  
5 intervals; provided, however, the failure to meet a commencement or completion date  
6 shall not, in and of itself, constitute a material breach of the development agreement  
7 pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the  
8 circumstances. The development agreement may include other defined performance  
9 standards to be met by the developer. The developer may request a modification in the  
10 dates as set forth in the agreement. Consideration of a proposed major modification of  
11 the agreement shall follow the same procedures as required for initial approval of a  
12 development agreement.

13 (c) If more than one local government is made party to an agreement, the  
14 agreement must specify which local government is responsible for the overall  
15 administration of the development agreement.

16 (d) The development agreement also may cover any other matter not inconsistent  
17 with this Part.

18 **"§ 160A-400.26. Law in effect at time of agreement governs development;**  
19 **exceptions.**

20 (a) Unless the development agreement specifically provides for the application of  
21 subsequently enacted laws, the laws applicable to development of the property subject  
22 to a development agreement are those in force at the time of execution of the agreement.

23 (b) Except for grounds specified in G.S. 160A-385.1(e), a local government may  
24 not apply subsequently adopted ordinances or development policies to a development  
25 that is subject to a development agreement.

26 (c) In the event State or federal law is changed after a development agreement  
27 has been entered into and the change prevents or precludes compliance with one or  
28 more provisions of the development agreement, the city may modify the affected  
29 provisions, upon a finding that the change in State or federal law has a fundamental  
30 effect on the development agreement, by ordinance after notice and a hearing.

31 (d) This section does not abrogate any rights preserved by G.S. 160A-385,  
32 160A-385.1, 153A-344, and 153A-344.1 or that may vest pursuant to common law or  
33 otherwise in the absence of a development agreement.

34 **"§ 160A-400.27. Periodic review to assess compliance with agreement; material**  
35 **breach by developer; notice of breach; cure of breach or modification or**  
36 **termination of agreement.**

37 (a) Procedures established pursuant to G.S. 160A-400.22 must include a  
38 provision for requiring periodic review by the zoning administrator or other appropriate  
39 officer of the local government at least every 12 months, at which time the developer  
40 must be required to demonstrate good faith compliance with the terms of the  
41 development agreement.

42 (b) If, as a result of a periodic review, the local government finds and determines  
43 that the developer has committed a material breach of the terms or conditions of the  
44 agreement, the local government shall serve notice in writing, within a reasonable time

1 after the periodic review, upon the developer setting forth with reasonable particularity  
2 the nature of the breach and the evidence supporting the finding and determination, and  
3 providing the developer a reasonable time in which to cure the material breach.

4 (c) If the developer fails to cure the material breach within the time given, then  
5 the local government unilaterally may terminate or modify the development agreement;  
6 provided, the notice of termination or modification may be appealed to the board of  
7 adjustment in the manner provided by G.S. 160A-388(b) and G.S. 153A-345(b).

8 **"§ 160A-400.28. Amendment or cancellation of development agreement by mutual**  
9 **consent of parties or successors in interest.**

10 A development agreement may be amended or canceled by mutual consent of the  
11 parties to the agreement or by their successors in interest.

12 **"§ 160A-400.29. Validity and duration of agreement entered into prior to change**  
13 **of jurisdiction; subsequent modification or suspension.**

14 (a) Except as otherwise provided by this Part, any development agreement  
15 entered into by a local government before the effective date of a change of jurisdiction  
16 shall be valid for the duration of the agreement, or eight years from the effective date of  
17 the change in jurisdiction, whichever is earlier. The parties to the development  
18 agreement and the local government assuming jurisdiction have the same rights and  
19 obligations with respect to each other regarding matters addressed in the development  
20 agreement as if the property had remained in the previous jurisdiction.

21 (b) A local government assuming jurisdiction may modify or suspend the  
22 provisions of the development agreement if the local government determines that the  
23 failure of the local government to do so would place the residents of the territory subject  
24 to the development agreement, or the residents of the local government, or both, in a  
25 condition dangerous to their health or safety, or both.

26 **"§ 160A-400.30. Developer to record agreement within 14 days; burdens and**  
27 **benefits inure to successors in interest.**

28 Within 14 days after a local government enters into a development agreement, the  
29 developer shall record the agreement with the register of deeds in the county where the  
30 property is located. The burdens of the development agreement are binding upon, and  
31 the benefits of the agreement shall inure to, all successors in interest to the parties to the  
32 agreement.

33 **"§ 160A-400.31. Applicability to local government of constitutional and statutory**  
34 **procedures for approval of debt.**

35 In the event that any of the obligations of the local government in the development  
36 agreement constitute debt, the local government shall comply, at the time of the  
37 obligation to incur the debt and before the debt becomes enforceable against the local  
38 government, with any applicable constitutional and statutory procedures for the  
39 approval of this debt.

40 **"§ 160A-400.32. Relationship of agreement to building or housing code.**

41 A development agreement adopted pursuant to this Chapter shall not exempt the  
42 property owner or developer from compliance with the State Building Code or State or  
43 local housing codes that are not part of the city's or county's planning, zoning, or  
44 subdivision regulations."

- 1           **SECTION 3.** Section 3 of S.L. 2003-326 reads as rewritten:
- 2           **"SECTION 3.** Section 1 of this act is effective when it becomes law and expires
- 3           June 30, ~~2005-2006~~. The remainder of this act is effective when it becomes law."
- 4           **SECTION 4.** Section 2 of this act applies only to Cabarrus County and to
- 5           the municipalities located in whole or in part in Cabarrus County.
- 6           **SECTION 5.** This act is effective when it becomes law.