

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2888 - SB 2806

March 1, 2024

SUMMARY OF BILL: Enacts the *Private Property Protection Act* to provide a method for a property owner to seek just compensation for a diminution in value of the property caused by the enactment or enforcement of land use regulations on the property by a local governmental entity (LGE). Provides that compensation for diminution does not apply to certain land use regulation.

Authorizes a property owner to demand just compensation through a written notice sent by certified mail to the chief executive officer of the LGE. Requires an LGE, within 90 days of receiving a written demand, to: (1) modify, remove, or choose not to apply the land use regulation; (2) provide just compensation to the owner; or (3) deny that compensation is due.

Provides that, if an LGE denies that compensation is due, or denies the amount claimed to be due, and does not modify, remove, or choose not to apply the land use regulation within 90 days after a written demand for just compensation is received, a property owner has a cause of action against the LGE for compensation or other remedy in the county circuit court in which the real property is located. Authorizes the court to award a prevailing property owner necessary and reasonable attorney fees, court costs, and expenses incurred by the owner from the date of submission of a written demand for compensation. Further provides that the remedy created by the legislation is in addition to another remedy under the Tennessee Constitution or United States Constitution, and is not intended to modify or replace other remedies.

FISCAL IMPACT:

Increase Local Expenditures – Exceeds \$50,000/FY24-25 and Subsequent Years*

Other Fiscal Impact – Due to multiple unknown factors, the extent of any additional impacts on local government revenue and expenditures cannot be reasonably determined.

Assumptions:

- Per the language of this legislation:
 - If an LGE enacts or enforces a new land use regulation that restricts the existing uses of private real property or an interest in the real property, the LGE must provide notice to the affected property owner, or the registered agent, by mail to

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- the address of record on the most current property tax record within 10 business days of the enactment of the new land use regulation.
- The notice must inform the owner that the new land use regulation may impact the owner’s existing property rights, and the owner has one year from the date of receipt of the notice to pursue remedy.
 - If as a result of the new land regulations, the fair market value of the affected property or interest decreases by at least 10 percent or \$50,000, whichever is greater, then the owner of the property must be paid just compensation.
 - “Just compensation” means an amount equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes a written demand.
 - “Real property” includes any surface, subsurface, or mineral estates.
- The proposed legislation provides that compensation for diminution does not apply to certain land use regulation, including regulation:
 - That restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
 - That restricts or prohibits activities for the protection of public health and safety;
 - To the extent the land use regulation is required to comply with federal law;
 - That restricts or prohibits the use of a property for the purpose of selling pornography or performing nude dancing; or
 - That was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.
 - Within 90 days of receiving a written demand for just compensation, an LGE shall:
 - Provide just compensation to the owner;
 - Modify, remove, or choose not to apply the land use regulation to allow the owner to use the property for a use permitted at the time the owner acquired the property; or
 - Deny that compensation is due.
 - Due to multiple unknown factors such as the number of instances of an LGE modifying, removing, or choosing not to apply a land use regulation that will occur and the purpose of such land use regulations, the extent of any fiscal impact to local government expenditures or revenue as a result of such action cannot be reasonably determined.
 - It is unknown how many property owners will request and receive just compensation from an LGE each year, but it can be reasonably assumed that at least one property owner will be awarded just compensation and the increase in local expenditures will exceed \$50,000 in FY24-25 and subsequent years.
 - In the event that a property owner brings a successful cause of action against an LGE for compensation, the LGE may be responsible for necessary and reasonable attorney fees, court costs, and expenses incurred by the owner from the date of submission of a written demand for just compensation. The cost of any future litigation and judgments, whether state or federal, is unknown and, therefore, any increase to local government expenditures cannot be reasonably determined.
 - Any fiscal impact to the courts can be absorbed within existing resources and is estimated to be not significant.

IMPACT TO COMMERCE:

NOT SIGNIFICANT

Assumption:

- The proposed legislation will not significantly impact commerce or jobs in this state.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista Lee Carsner in black ink.

Krista Lee Carsner, Executive Director

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