

HOUSE BILL 560

By Todd

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to compensation for the diminution in
value of private property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following
as a new chapter:

29-42-101. Short title – Intent.

(a) This chapter is known and may be cited as the "Private Property Protection
Act."

(b) It is the intent of the general assembly to create a statutory process whereby
private property owners may seek judicial relief when a governmental entity has taken
action through regulation that results in the diminution in value of the subject property.

29-42-102. Definitions.

As used in this chapter:

(1) "Family member" means an owner's wife, husband, son, daughter,
mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-
in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent,
stepchild, grandparent, or grandchild, an estate of such a relative, or a legal
entity owned by one (1) or more relatives or the owner of the property;

(2) "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 land use regulation
goes into effect;

(3) "Land use regulation" means:

(A) An ordinance or resolution regulating the use of land or an interest therein; and

(B) Local government zoning ordinances, land division ordinances, and transportation ordinances;

(4) "Owner" means the present owner of real property, or an interest therein; and

(5) "Public entity" means a local governmental entity.

29-42-103. Compensation for diminution in value of real property.

If a public entity enacts or enforces a new land use regulation that restricts or prohibits the existing uses of a parcel of private real property or an interest therein, and if as a result of that restriction or prohibition, the fair market value of the affected property or interest decreases by at least ten percent (10%), then the owner of the private real property must be paid just compensation. Notwithstanding this section, compensation is not payable if the decrease in the fair market value of the affected property or interest therein is less than ten thousand dollars (\$10,000).

29-42-104. Applicability.

Section 29-42-103 does not apply to a land use regulation:

(1) That restricts or prohibits activities commonly and historically recognized as public nuisances under common law. This subdivision (1) must be construed narrowly in favor of a finding of compensation under this chapter;

(2) That restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(3) To the extent the land use regulation is required to comply with federal law;

(4) That restricts or prohibits the use of a property for the purpose of selling pornography or performing nude dancing. This subdivision (4) does not affect or alter rights provided by the United States Constitution or Tennessee Constitution with respect to such activities; or

(5) 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.

29-42-105. Demand for just compensation.

(a)

(1) An owner may demand just compensation under § 29-42-103 by providing written notice to a public entity enacting or enforcing a land use regulation.

(2) The written notice must be sent by certified mail to the chief executive officer of the public entity and describe the affected property and identify the owner's interest therein.

(3) The written notice must include a written appraisal and may include other evidence that supports the claim and demonstrates the loss in fair market value.

(b) Written demand for compensation under subsection (a) must be made within three (3) years of the enactment of the land use regulation or the date the owner of the property submits a land use application in which the enacted land use regulation is an approval criterion, whichever is earlier.

29-42-106. Duties of public entity after receiving demand for just compensation.

Within one hundred eighty (180) days of receiving a written demand under § 29-42-105, a public entity shall:

- (1) 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;
- (2) Offer other non-monetary remedies, including, but not limited to, density transfers;
- (3) Provide just compensation to the owner; or
- (4) Deny that compensation is due under this chapter.

29-42-107. Cause of action.

(a) If a public entity 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 or reach another agreement with the property owner within one hundred eighty (180) days after a written demand for just compensation is received, then the owner has a cause of action against the public entity for compensation or other remedy under this chapter in the circuit court for the county in which the real property is located.

(b) The failure of an owner of property to file an application for a land use permit with a public entity is not grounds for dismissal, abatement, or delay of a compensation claim under subsection (a).

(c) In an action brought pursuant to this section, the court shall award the prevailing party necessary and reasonable attorney fees, court costs, and expenses incurred by the party during the course of the proceedings.

(d) The remedy created by this chapter is in addition to other remedies available under the Tennessee Constitution or United States Constitution, and is not intended to modify or replace other remedies.

SECTION 2. The headings to sections, parts, and chapters in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. If a provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.