

SENATE BILL 2806

By Lowe

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to land use regulation.

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:

29-44-101. 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.

29-44-102. Chapter 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 owner makes written
demand for compensation under this chapter;

(3) "Land use regulation" means:

(A) An ordinance, policy, or resolution regulating the use of land or an interest in the real property; and

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

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

(5) "Public entity" means a local governmental entity; and

(6) "Real property" includes any surface, subsurface, or mineral estates.

29-44-103. Compensation for diminution in value of real property.

(a) If a public entity enacts or enforces a new land use regulation that restricts the existing uses of private real property or an interest in the real property, then the public entity must provide notice of the new land use regulation to the owner of an affected property, or the registered agent, by mail to the address referenced in the public entity's most current property tax records. The notice required by this subsection (a) must be mailed within ten (10) business days of the enactment of the new land use regulation and must inform the owner that the new land use regulation may impact the owner's existing property rights and the owner may have only one (1) year from the date of receipt of the notice to pursue any rights pursuant to this chapter.

(b) If a public entity enacts or enforces a new land use regulation that restricts the existing uses of private real property or an interest in the real property and has the effect of reducing the fair market value of the property by a minimum of ten percent (10%) or fifty thousand dollars (\$50,000), whichever amount is greater, then the owner of the property must be paid just compensation.

29-44-104. Applicability.

Section 29-44-103 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 Constitution of Tennessee 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.

29-44-105. Demand for just compensation.

(a)

(1) An owner may demand just compensation under § 29-44-103(b) 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 in the property.

(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 one (1) year of owner's receipt of the notice required by § 29-44-103(a).

29-44-106. Duties of public entity after receiving demand for just compensation.

Within ninety (90) days of receiving a written demand under § 29-44-105, the public entity shall:

(1) Provide just compensation to the owner;

(2) 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

(3) Deny that compensation is due under this chapter.

29-44-107. 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 ninety (90) 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, if the prevailing party is the owner of the property, then the court may award the owner necessary and reasonable

attorney fees, court costs, and expenses incurred by the owner from the date of submission of a written demand pursuant to § 29-44-105(a).

(d) The remedy created by this chapter is in addition to other remedies available under the Constitution of Tennessee or the 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.