

SENATE BILL 1993

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 1;
Title 4; Title 5; Title 6; Title 7; Title 38; Title 62;
Title 63 and Title 67, relative to governmental
approval.

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

SECTION 1. Tennessee Code Annotated, Title 7, is amended by adding the following language as a new chapter:

7-70-101. Short title.

This chapter shall be known and may be cited as the "Permit Freedom Act."

7-70-102. Chapter definitions.

As used in this chapter:

- (1) "Applicant" means a person submitting an application for governmental approval;
- (2) "Application" means a written request submitted by an applicant to a local governmental entity for governmental approval;
- (3) "Federal governmental entity" means any component of the United States government;
- (4) "Governmental approval" means a license, certificate, registration, certification, permit, fee, or other form of permission required from a governmental entity prior to engaging in any constitutionally protected activity;
- (5) "Local government" means any county, municipality, city, or other political subdivision of this state;

(6) "Local governmental entity" means any component of a local government with authority to issue or enforce, or collect fees for, governmental approvals; and

(7) "State governmental entity" means any component of the executive branch of this state.

7-70-103. Required response time by a local governmental entity to an application for governmental approval; required notices.

(a)

(1) Notwithstanding any law to the contrary, if governmental approval is required from a local governmental entity prior to an applicant engaging in a constitutionally protected activity, then the local governmental entity must provide the applicant, in clear and unambiguous language, the criteria the local governmental entity uses to grant or deny an application for that governmental approval. The determination of what constitutes clear and unambiguous language is a judicial question, without deference to the party defending the governmental approval.

(2) A local governmental entity shall make a final determination with regard to an application within a time period deemed appropriate by the local governmental entity, but not to exceed one hundred twenty (120) days, following the local governmental entity receiving the application, unless another time period is provided in state law.

(3) If a local governmental entity does not deny an application within the time period described in subdivision (a)(2), then the application is deemed approved and the local governmental entity must grant the applicant the governmental approval.

(4) If the local governmental entity denies the application within the time period described in subdivision (a)(2), then the local governmental entity must

provide the applicant with a denial notice, either in writing or electronically, that clearly states the reason for the denial.

(b) An applicant shall submit an application, in writing, to the local governmental entity on a form provided by the local governmental entity, if a form exists. An application, not on a form provided by the local governmental entity, must clearly identify on the first page of the application the specific governmental approval being sought. An application may also be submitted through the local governmental entity's online portal or website, if available. An application is not complete if the application is not in compliance with this subsection (b).

(c) An applicant may designate a person to act on the applicant's behalf regarding an application. Any action taken by, or notice given to, the applicant's designee related to the application is deemed taken by, or given to, the applicant.

(d)

(1) The time period described in subdivision (a)(2) begins upon the local governmental entity's receipt of an application. If a local governmental entity receives an application that does not contain all items required by state law, or ordinance, resolution, or policy of the local governmental entity, along with any applicable application fee, then the local governmental entity shall send a notice, either in writing or electronically, to the applicant within twenty-one (21) calendar days of receipt of the incomplete application describing the missing items needed to complete the application.

(2) The time period described in subdivision (a)(2) starts over if the applicant provides an amended application with the missing items described in subdivision (d)(1). If no amended application is received by the local

governmental entity within the time period described in subdivision (a)(2), then the local governmental entity may deny the application.

(e) If an application requires the approval of more than one (1) local governmental entity, then the time period described in subdivision (a)(2) begins for all local governmental entities on the day an application is received by the initial local governmental entity. The local governmental entity receiving the application shall forward copies of the application to all other local governmental entities whose approval is required.

(f)

(1) A local governmental entity's final determination, including conditional approval, meets the time period described in subdivision (a)(2) if the local governmental entity proves through documentation the final determination was sent to the applicant within the time period described in subdivision (a)(2).

(2) If the local governmental entity grants the applicant conditional approval, then the local governmental entity must provide the conditions to the applicant in clear and unambiguous language. The determination of what constitutes clear and unambiguous language is a judicial question, without deference to the party defending the governmental approval.

(3) A local governmental entity may revoke or rescind its final determination of conditional approval if the applicant fails to satisfy the conditions. The local governmental entity's decision to revoke or rescind its approval under these circumstances does not give rise to a claim under § 7-70-104, that the local governmental entity failed to meet the time period described in subdivision (a)(2).

(g) The time period described in subdivision (a)(2) is extended if a state law, federal law, or court order requires a process to occur before the local governmental entity makes a final determination on the application, and the time period prescribed in the state law, federal law, or court order prohibits a local governmental entity from making a final determination on the application within the time period described in subdivision (a)(2). In situations described in this subsection (g), the time period described in subdivision (a)(2) is extended to sixty (60) calendar days after completion of the last process required in the applicable state law, federal law, or court order. The final determination by the local governmental entity is not a process for purposes of this subsection (g).

(h) The time period described in subdivision (a)(2) is extended if an application submitted to a local governmental entity requires prior approval of a state or federal governmental entity. In situations described in this subsection (h), the time period described in subdivision (a)(2) is extended to sixty (60) calendar days after the required prior approval is granted.

(i) An applicant may request, in writing, that the local governmental entity grant an extension of the time period described in subdivision (a)(2). The local governmental entity shall approve or deny the extension request and notify the applicant of the local governmental entity's decision within twenty-one (21) calendar days upon receipt of the extension request.

(j)

(1) If an applicant receives a denial notice from the local governmental entity, and resubmits the application, addressing the items described in the denial notice within thirty (30) days of receipt of the denial notice, then the local

governmental entity must reconsider the revised application and not assess any application fee to the applicant for the revised application.

(2) A local governmental entity shall approve or deny the revised application within thirty (30) calendar days from the time the revised application is received by the local governmental entity. Any denial of the revised application is limited to the deficiencies cited in the denial notice or deficiencies that relate to changes in the revised application that were not contained in the original application.

(k) A local governmental entity shall process all applications on a nondiscriminatory basis.

7-70-104. Applicant's right to petition court.

(a) If a local governmental entity does not issue a final determination on an application within the time periods set forth in § 7-70-103, then the applicant may file a petition for a writ of mandamus directing the local governmental entity to grant the governmental approval. Venue lies in the court of the county where the applicable local governmental entity keeps its office and does business.

(b) At all times, the burden of proof to demonstrate that the local governmental entity has met the time periods set forth in § 7-70-103 is on the local governmental entity.

(c) The petitioner has a right to discovery as set forth in the Tennessee Rules of Civil Procedure. If the petitioner exercises the right to discovery, then the court must hold the evidentiary hearing within thirty (30) days following completion of discovery as certified in writing by the petitioner.

(d) The court may hear testimony from witnesses, compel production of documents, and admit relevant admissible evidence that was not considered by the local governmental entity.

(e) If a local governmental entity does not issue a final determination within the time periods set forth in § 7-70-103, and prior to the applicant filing a petition for a writ of mandamus, or while waiting for issuance of the writ by the relevant court, then the local governmental entity shall not enforce any ordinance, resolution, penalty, or other measure against the applicant for operating without governmental approval.

(f) If the local governmental entity enforces any ordinance, resolution, penalty, or other measure against the applicant for operating without governmental approval, despite the local governmental entity's failure to issue a final determination within the time periods set forth in § 7-70-103, that failure to issue a final determination operates as an affirmative defense for the applicant in any administrative or legal proceeding.

SECTION 2. The headings to sections 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. This act shall take effect on July 1, 2020, the public welfare requiring it, and shall apply to applications submitted on or after that date.