

CHAPTER 181

(HB 72)

AN ACT relating to planning and zoning and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 100 IS CREATED TO READ AS FOLLOWS:

- (1) *Any party that appeals the Circuit Court's final decision made in accordance with any legal challenge under this chapter shall, upon motion of an appellee as set forth in subsection (2) of this section, be required to file an appeal bond as set forth in this section.*
- (2) *Within thirty (30) days of the filing of the notice of appeal in Circuit Court, any appellee may file a motion for the Circuit Court, pursuant to the jurisdictional authority established in Rule 73.06 of the Kentucky Rules of Civil Procedure, to order the appellant to post an appeal bond, which the Circuit Court shall impose, subject to the other requirements of this sections. If an appellee does not move the Circuit Court to require the appellant to post an appeal bond, the right to request an appeal bond is waived.*
- (3)
 - (a) *Within thirty (30) days of an appellee filing a motion in Circuit Court for the appellant to post an appeal bond, the Circuit Court shall conduct a hearing to determine the amount of the appeal bond, issue findings of fact, and set the bond amount with good and sufficient surety.*
 - (b) *In determining the amount of the appeal bond, the Circuit Court shall determine if the appeal is presumptively frivolous, including but not limited to:*
 1. *Whether the appeal is of a ministerial or discretionary decision; and*
 2. *Whether or not there exists a reasoned interpretation supporting the appellant's position.*
 - (c) *If the Circuit Court determines that an appeal is presumptively frivolous, the Circuit Court shall consider all costs, economic loss, and damages that the appellee may suffer or incur during the pendency of, or that will be caused by, the appeal, including attorney fees and court costs, up to a maximum bond amount of two hundred fifty thousand dollars (\$250,000).*
 - (d) *If the Circuit Court determines that an appeal is not presumptively frivolous, the Circuit Court shall consider the costs that the appellee may incur during the pendency of the appeal, including but not limited to attorney fees and court costs, plus interest payable on land acquisition or development loans, up to a maximum bond amount of one hundred thousand dollars (\$100,000).*
 - (e) *Whether the Circuit Court makes a determination under paragraph (c) or (d) of this subsection:*
 1. *Costs and damages shall not include expenses incurred prior to the date the notice of appeal is filed with the Circuit Court: and*
 2. *The appellee has the burden to present sufficient evidence establishing the appellee's cost and damages.*
 - (f) *The appeal shall be dismissed if the bond is not posted within fifteen (15) days of the Circuit Court's determination of the bond amount.*
- (4)
 - (a) *Once an appeal pursuant to this section becomes final and unappealable, either the appellant or the appellee may make a motion in the originating Circuit Court requesting that the Circuit Court conduct a hearing to determine the actual costs and damages to be paid to the appellee under the appeal bond.*
 - (b) *The Circuit Court shall hold the hearing within thirty (30) days of the request and issue findings of fact as to the costs and damages within an additional thirty (30) days.*
 - (c) *Costs and damages awarded under this subsection shall be limited to the amount of the appeal bond.*
 - (d) *If neither party moves the Circuit Court within sixty (60) days pursuant to this subsection, the Circuit Court may on its own motion release the appeal bond.*

- (5) *Subsections (1) and (2) of this section shall not apply to the United States, the Commonwealth of Kentucky or any of its municipal corporations or political subdivisions, or any of their agencies or officers acting for or on their behalf, or to a person challenging the creation or expansion of a landfill.*

➔Section 2. Whereas it is desirable to curb unnecessary appeals of land use cases, which appeals burden the courts, cause loss of jobs and loss of tax revenue, and many times render time-sensitive projects such as multifamily affordable housing projects undevelopable, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 11, 2017.