

1 AN ACT relating to ensuring fair permitting and licensing practices.

2 WHEREAS, the freedom of the citizens of Kentucky to engage in constitutionally
3 protected activities has been increasingly curtailed by delays in permit requirements,
4 licensing restrictions, and burdensome rules that require obtaining government
5 permission; and

6 WHEREAS, about one-third of Kentucky citizens must get some form of
7 permission from the state to do their jobs; and

8 WHEREAS, property owners are frequently forced to give up land, money, or other
9 rights in exchange for building or development permits; and

10 WHEREAS, unelected bureaucrats, many of whom spend decades in their
11 respective roles, have been exercising extraordinary judgment in approving permits using
12 unclear criteria, unknown deadlines for approval, and uncertain appeals processes for
13 permits that applicants believe were wrongly denied;

14 NOW, THEREFORE,

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

16 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
17 READ AS FOLLOWS:

18 *As used in Sections 1 to 4 of this Act:*

19 *(1) "Administrative hearing" or "hearing" has the same meaning as in KRS*
20 *13B.010;*

21 *(2) "Final order" has the same meaning as in KRS 13B.010;*

22 *(3) "Hearing officer" has the same meaning as in KRS 13B.010;*

23 *(4) "Party" has the same meaning as in KRS 13B.010; and*

24 *(5) "Public agency" has the same meaning as in KRS 61.870.*

25 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
26 READ AS FOLLOWS:

27 *(1) Notwithstanding any other law to the contrary, a public agency shall specify in*

1 clear and unambiguous language the criteria for approval of a license or permit.

2 (2) A public agency shall not deny a permit for reasons not specified by law.

3 (3) (a) A public agency shall approve or deny an application for a license or

4 permit:

5 1. Within thirty (30) days; or

6 2. At a specific time prescribed by law, administrative regulation, rule, or

7 ordinance;

8 (b) If a law, administrative regulation, rule, or ordinance is silent or ambiguous

9 on a timeline to approve or deny a license or permit, then a public agency

10 shall approve or deny the license or permit within thirty (30) days.

11 (4) If a license or permit is not approved or denied within the timeframe defined in

12 subsection (3) of this section, the application shall be deemed approved by a

13 public agency unless:

14 (a) The application is incomplete; and

15 (b) The applicant, after being notified of the deficiency, has failed to correct it.

16 (5) The determination of what constitutes clear and unambiguous language shall be

17 a judicial question, without deference to the government or public agency.

18 (6) This section shall not apply to licenses or permits the criteria for which are

19 established by federal law.

20 → SECTION 3. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO

21 READ AS FOLLOWS:

22 (1) A party who has been denied a license or permit may request an administrative

23 hearing to be conducted by the public agency that issued the denial. The public

24 agency shall conduct the hearing in accordance with this section and KRS

25 Chapter 13B or the relevant provision governing administrative hearings for that

26 public agency.

27 (2) Notwithstanding subsection (1) of this section, in any public agency hearing

1 *involving an application for a license or permit, a public agency shall have the*
2 *burden of persuasion relating to a public agency's:*
3 (a) *Denial of a license or permit;*
4 (b) *Denial of an application or request for modification of a license or permit*
5 *application;*
6 (c) *Action to suspend, revoke, terminate, or modify on its own initiative*
7 *material conditions of a license or permit;*
8 (d) *Imposition of fees or penalties; and*
9 (e) *Compliance order.*

10 (3) *Notwithstanding subsection (1) of this section, a public agency hearing involving*
11 *an application for a license or permit, upon application of a party or the public*
12 *agency and for use as evidence, the hearing officer may permit a deposition to be*
13 *taken, in the manner and on the terms designated by the hearing officer, of a*
14 *witness who cannot be subpoenaed or who is unable to attend the hearing.*

15 ➔ SECTION 4. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
16 READ AS FOLLOWS:

17 (1) *The parties in a public agency hearing involving the denial of a license or permit*
18 *shall be entitled to a speedy and public judicial review of a final order pursuant to*
19 *KRS 13B.140 or the relevant provisions governing judicial review of a final order*
20 *of an administrative hearing for that public agency.*

21 (2) *If requested by a party to an action, within sixty (60) days after the filing of a*
22 *petition for review of a final order involving an application for a license or*
23 *permit:*

24 (a) *The court shall hold an evidentiary hearing, including testimony and*
25 *argument, to the extent necessary to make the determination; and*
26 (b) *The determination of facts may be made by a jury.*

27 (3) *The court shall admit relevant and admissible exhibits and testimony that were*

1 not received so long as otherwise compliant with the Kentucky Rules of Evidence,
2 and shall consider objections that a party failed to make to evidence offered
3 during the public agency hearing involving an application for a license or permit,
4 unless:
5 (a) The exhibit, testimony, or objection was withheld for purposes of delay,
6 harassment, or other improper purpose; or
7 (b) Allowing admission of the exhibit or testimony or consideration of the
8 objection would cause substantial prejudice to another party.