

HOUSE BILL No. 2088

By Committee on Commerce, Labor and Economic Development

Requested by Andrew Wiens on behalf of Opportunity Solutions Project

1-23

1 AN ACT concerning housing; enacting the fast-track permits act; requiring
2 local governments to meet specified deadlines for issuing building
3 permits and other required approvals for real estate development;
4 **requiring the secretary of health and environment to issue a**
5 **decision within 45 days on an application for an authorization to**
6 **discharge stormwater runoff from construction activities under the**
7 **federal national pollutant discharge elimination system general**
8 **permit or a rainfall erosivity waiver;** amending K.S.A. 12-752-~~and~~
9 ~~12-759~~ and repealing the existing ~~sections~~ **section**.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 New Section 1. (a) The provisions of sections 1 through 3, and
13 amendments thereto, shall be known and may be cited as the fast-track
14 permits act.

15 (b) The purpose of the fast-track permits act is to enhance economic
16 growth in local communities and reduce the regulatory burden on
17 entrepreneurs, developers and homeowners by streamlining the review
18 process for local building permits.

19 New Sec. 2. For the purposes of the fast-track permits act:

20 (a) "Act" means the fast-track permits act, sections 1 through 3, and
21 amendments thereto.

22 (b) "Applicant" means a person that submits an application to a local
23 government, including a person designated to act on the applicant's behalf.

24 (c) "Application" means:

25 ~~(1)~~ a request to the appropriate local governmental authority for a
26 building permit or other required local governmental approval of an action
27 related to the development of a single-family residential, ~~multifamily~~
28 ~~residential, or commercial or industrial~~ improvement upon real estate
29 within the jurisdiction of such local governmental authority; ~~or~~

30 ~~(2)~~. "Application" **does not include** an appeal to a zoning board of
31 appeals or planning commission designated as a zoning board of appeals
32 ~~by any person aggrieved, or any officer of a city, county or any~~
33 ~~governmental agency or body affected by any decision of an officer~~

1 ~~administering the provisions of a zoning ordinance or resolution, as~~
2 ~~provided by K.S.A. 12-759, and amendments thereto.~~

3 (d) (1) "Complete application" means an application containing all
4 information and meeting all requirements pursuant to:

5 (A) A rule, resolution, ordinance or policy of the local government
6 that was adopted prior to the date that the complete application was
7 submitted to the local government by the applicant; or

8 (B) applicable state or federal law.

9 (2) A "complete application" shall also include the applicant's mailing
10 address, telephone number, email address, if the applicant has an email
11 address and facsimile number, if the applicant has a fax number.

12 (e) "Local government" or "local governmental authority" means the
13 applicable governing body, commission, board or other authority of a
14 municipality, city, county, township, district or other political subdivision
15 of this state with jurisdiction over an application.

16 New Sec. 3. (a) (1) **(A) Except as provided by subparagraph (B), a**
17 **local government shall approve or deny an application and provide written**
18 **notice of such decision to the applicant within 60 days of receipt of a**
19 **complete application. If an application is not complete, the local**
20 **government shall provide written notice to the applicant of the reason or**
21 **reasons that the application is deemed not complete within 15 days of**
22 **receipt of the application and provide an opportunity for the applicant to**
23 **submit missing information, make required modifications or cure any**
24 **other deficiency. If the application is not complete when received by the**
25 **local government, the date that the applicant completes the application**
26 **shall constitute the date of receipt of the application, except as provided by**
27 **paragraph (2).**

28 **(B) The requirement that the local government approve or deny**
29 **an application and provide written notice of such decision to the**
30 **applicant within 60 days of receipt of a complete application pursuant**
31 **to the provisions of subsections (a) and (b) shall not apply if an**
32 **applicant agrees in writing to proceed with phased permitting.**

33 (2) If the local government fails to provide written notice to the
34 applicant that an application is not complete within 15 days of receipt of
35 an incomplete application, the deadline of 60 days for the provision of
36 written notice of approval or denial by the local government pursuant to
37 paragraph (1) shall apply starting from the date that such incomplete
38 application was received. If any deficiency in the application requires
39 resolution prior to a decision by the local government and such deficiency
40 cannot be cured by the applicant within the period required that the local
41 government may reasonably approve or deny the application, the local
42 government shall deny the application as required by this act, with leave
43 for the applicant to resubmit the application. The provisions of paragraph

1 (1) shall apply to any resubmitted application in the same manner
2 applicable to the initial application. No additional filing fees shall be
3 charged by the local government with respect to such a resubmission of an
4 application following a denial. An application may be denied and
5 resubmitted more than once in the event that the applicant is unable to
6 timely cure a deficiency.

7 (b) If a local government fails to provide written notice to an
8 applicant of the approval or denial of an application within 60 days from
9 the date that such application is received or deemed received by the local
10 government pursuant to subsection (a)(1) or (2), the application shall be
11 deemed approved by the local government.

12 (c) (1) The local government shall state the reasons for a denial of an
13 application in the written notice to the applicant. A local government shall
14 not deny an application on the basis of a rule, resolution, ordinance or
15 policy of the local governmental authority or respective municipality, city,
16 county, township, district or other political subdivision of the state that is
17 adopted or amended subsequent to the date the complete application was
18 submitted by the applicant to the local government.

19 (2) In approving an application, the local government shall not
20 require any conditions or requirements pursuant to a rule, resolution,
21 ordinance or policy of the local governmental authority or respective
22 municipality, city, county, township, district or other political subdivision
23 that was not adopted or amended prior to the date that the complete
24 application was submitted by the applicant to the local government.

25 (d) For purposes of this act, any required signatures may be
26 electronic. A local government shall provide written notice of a decision
27 on an application or of an incomplete application, and an applicant shall
28 submit an application on the date that the ~~notice or application is:~~

29 (1) **Notice is** deposited in the United States mail **by the local**
30 **government**, addressed to the address provided by the applicant ~~or local~~
31 ~~government~~ and proof of the date of mailing is obtained;

32 (2) **application of the applicant is received in the United States**
33 **mail by the local government;**

34 (3) **notice or application is** written in the body of or in an attachment
35 to an email sent to the email address provided by the applicant or local
36 government. If possible, the email shall be sent with a request for a
37 delivery receipt confirming that the email was delivered to the recipient's
38 email server;

39 ~~(3)~~(4) **notice or application is** faxed to the facsimile number
40 provided by the applicant or local government; or

41 ~~(4)~~(5) **notice or application is** submitted to a private courier for
42 delivery addressed to the address provided by the applicant or local
43 government and proof of the date of submission to such courier is

1 obtained.

2 (e) For purposes of determining deadlines pursuant to this act,
3 weekends shall be included. Federal or state holidays shall not be included.

4 (f) The provisions of this section shall not supersede any rule,
5 resolution, ordinance or policy of a municipality, city, county or other
6 political subdivision of this state providing for a shorter period of time for
7 a local governmental authority to issue decisions upon applications or give
8 notice of incomplete applications. The specified deadlines and provisions
9 of this section shall apply in addition to any such requirements.

10 **New Sec. 4. Within 45 days of the submittal by an applicant to the**
11 **department of health and environment of a complete notice of intent**
12 **to discharge stormwater runoff from construction activities requesting**
13 **authorization to discharge stormwater runoff from construction**
14 **activities under the federal national pollutant discharge elimination**
15 **system general permit or a rainfall erosivity waiver application and**
16 **including all supporting documentation pursuant to applicable federal**
17 **or state law, the secretary of health and environment shall issue an**
18 **authorization, waiver or denial, as determined by the secretary, to the**
19 **applicant. The provisions of this section shall not be construed to**
20 **supersede conflicting federal law.**

21 ~~Sec.-4:~~ **5.** K.S.A. 12-752 is hereby amended to read as follows: 12-
22 752. (a) The owner or owners of any land located within an area governed
23 by regulations subdividing the same into lots and blocks or tracts or
24 parcels, for the purpose of laying out any subdivisions, suburban lots,
25 building lots, tracts or parcels or any owner of any land establishing any
26 street, alley, park or other property intended for public use or for the use of
27 purchasers or owners of lots, tracts or parcels of land fronting thereon or
28 adjacent thereto, shall have a plat drawn as may be required by the
29 subdivision regulations. Such plat shall accurately describe the
30 subdivision, lots, tracts or parcels of land giving the location and
31 dimensions thereof and the location and dimensions of all streets, alleys,
32 parks or other properties intended to be dedicated to public use or for the
33 use of purchasers or owners of lots, tracts or parcels of land fronting
34 thereon or adjacent thereto. All plats shall be verified by the owner or
35 owners thereof. All such plats shall be submitted to the planning
36 commission or to the joint committee for subdivision regulation.

37 (b) The planning commission or the joint committee shall determine
38 if the plat conforms to the provisions of the subdivision regulations. If
39 such determination is not made within 60 days ~~after the first meeting of~~
40 ~~such commission or committee~~ following the date of the ~~submission~~
41 ~~receipt~~ of the plat ~~to by the secretary thereof as provided by sections 2 and~~
42 ~~3, and amendments thereto~~, such plat shall be deemed to have been
43 approved and a certificate shall be issued by the secretary of the planning

1 commission or joint committee upon demand. If the planning commission
2 or joint committee finds that the plat does not conform to the requirements
3 of the subdivision regulations, the planning commission or joint committee
4 shall notify the owner or owners of such fact *as required by sections 2 and*
5 *3, and amendments thereto*. Such notice shall be in writing and shall
6 specify in detail the reasons the plat does not conform to the requirements
7 of the subdivision regulations. If the plat conforms to the requirements of
8 such regulations, there shall be endorsed thereon the fact that the plat has
9 been submitted to and approved by the planning commission or joint
10 committee.

11 (c) The governing body shall accept or refuse the dedication of land
12 for public purposes ~~within 30 days after the first meeting of the governing~~
13 ~~body following the date of the submission receipt of the plat to by the clerk~~
14 ~~thereof as provided by sections 2 and 3, and amendments thereto.~~ ~~The~~
15 ~~governing body may defer action for an additional 30 days for the purpose~~
16 ~~of allowing for modifications to comply with the requirements established~~
17 ~~by the governing body. No additional filing fees shall be assessed during~~
18 ~~that period.~~ If the governing body ~~defers or~~ refuses such dedication, ~~it the~~
19 ~~governing body~~ shall notify the owner or owners of the land and the
20 planning commission or joint committee of such fact *in accordance with*
21 *sections 2 and 3, and amendments thereto*. Such notice shall be in writing,
22 and if the ~~deferral or~~ refusal of the dedication of land is based upon
23 noncompliance with the requirements established by the governing body,
24 the notice shall specify in detail the nature of such noncompliance.

25 (d) The governing body may establish a scale of reasonable fees to be
26 paid to the secretary of the planning commission or joint committee by the
27 applicant for approval for each plat filed with the planning commission or
28 joint committee.

29 (e) No building or zoning permit shall be issued for the use or
30 construction of any structure upon any lot, tract or parcel of land located
31 within the area governed by the subdivision regulations that has been
32 subdivided, resubdivided or replatted after the date of the adoption of such
33 regulations by the governing body or governing bodies but ~~which~~ has not
34 been approved in the manner provided by this act.

35 (f) Any regulations adopted by a governing body with reference to
36 subdividing lots shall provide for the issuance of building permits on
37 platted lots divided into not more than two tracts without having to replat
38 such lots. Such regulations also may authorize and establish conditions for
39 the issuance of building permits on lots divided into three or more tracts
40 without having to replat such lots. Such regulations shall provide that lots
41 zoned for industrial purposes may be divided into two or more tracts
42 without replatting such lot. Such regulations shall contain a procedure for
43 issuance of building or zoning permits on divided lots, which shall take

1 into account the need for adequate street rights-of-way, easements,
2 improvement of public facilities, and zoning regulations if in existence.

3 (g) The regulations shall provide for a procedure ~~which~~ *that* specifies
4 a time limit within which action shall be taken *that shall be subject to the*
5 *requirements of sections 2 and 3, and amendments thereto*, and shall
6 further provide, where applicable, for the final decision on the issuance of
7 such building permit to be made by the governing body, except as may be
8 provided by law.

9 (h) The register of deeds shall not file any plat until such plat shall
10 bear the endorsement ~~hereinbefore provided as provided by subsection (b)~~
11 and the land dedicated for public purposes has been accepted by the
12 governing body.

13 Sec. 5.—K.S.A. 12-759 is hereby amended to read as follows: 12-759-
14 ~~(a) Any governing body which that has enacted a zoning ordinance or~~
15 ~~resolution shall create a board of zoning appeals by adoption of the~~
16 ~~appropriate ordinance or resolution. Such board shall consist of not less~~
17 ~~than three nor more than seven members. If a city enacts zoning~~
18 ~~regulations which that affect land outside the corporate limits of such city,~~
19 ~~at least one member of the board shall be a resident of the area outside the~~
20 ~~city's limits. The members first appointed shall serve respectively for terms~~
21 ~~of one, two and three years, divided equally or as nearly equally as~~
22 ~~possible among the members. Thereafter the terms of the members may be~~
23 ~~changed to either three or four years, whichever is deemed to be in the best~~
24 ~~interest of the city or county. Vacancies shall be filled by appointment for~~
25 ~~the unexpired terms. The members of such board shall serve without~~
26 ~~compensation. The board annually shall elect one of its members as~~
27 ~~chairperson, and shall appoint a secretary who may be an officer or an~~
28 ~~employee of the city or county. The board shall adopt rules in accordance~~
29 ~~with the provisions of the ordinance or resolution creating the board.~~
30 ~~Meetings of the board shall be held at the call of the chairperson and at~~
31 ~~such other times as the board may determine. The board shall keep~~
32 ~~minutes of its proceedings, showing evidence presented, findings of fact~~
33 ~~by the board, decisions of the board and the vote upon each question.~~
34 ~~Records of all official actions of the board shall be filed in its office and~~
35 ~~shall be a public record. The governing body, in the ordinance or~~
36 ~~resolution creating such board, may establish a scale of reasonable fees to~~
37 ~~be paid in advance by the party appealing. Any two or more cities or~~
38 ~~counties which that have established a joint planning commission may~~
39 ~~establish a joint board of zoning appeals.~~

40 (b) ~~Any board of zoning appeals in existence on the effective date of~~
41 ~~this act shall continue in existence, but shall be governed by the provisions~~
42 ~~of this act.~~

43 (c) ~~The board of zoning appeals shall administer the details of appeals~~

1 from or other matters referred to it regarding the application of the zoning
2 ordinance or resolution as hereinafter provided. The board shall fix a
3 reasonable time for the hearing of an appeal or any other matter referred to
4 it. Notice of the time, place and subject of such hearing shall be published
5 once in the official city newspaper in the case of a city and in the official
6 county newspaper in the case of a county at least 20 days prior to the date
7 fixed for hearing. ~~Such notice shall also be provided at such time on the~~
8 ~~website of the city or county, if the city or county has a website.~~ A copy of
9 the notice shall be mailed to each party to the appeal and to the appropriate
10 planning commission.

11 (d) Appeals to the board of zoning appeals may be taken by any
12 person aggrieved, or by any officer of the city, county or any governmental
13 agency or body affected by any decision of the officer administering the
14 provisions of the zoning ordinance or resolution. Such appeal shall be
15 taken within a reasonable time as provided by the rules of the board, by
16 filing a notice of appeal specifying the grounds thereof and the payment of
17 the fee required therefor. The officer from whom the appeal is taken, when
18 notified by the board or its agent, shall transmit to the board all the papers
19 constituting the record upon which the action appealed from was taken.
20 The board shall have power to hear and decide appeals where it is alleged
21 there is error in any order, requirement, decision or determination made by
22 an administrative official in the enforcement of the zoning ordinance or
23 resolution. In exercising the foregoing powers, the board, in conformity
24 with the provisions of this act, may reverse or affirm, wholly or partly, or
25 may modify the order, requirement, decision, or determination, and to that
26 end shall have all the powers of the officer from whom the appeal is taken,
27 may attach appropriate conditions, and may issue or direct the issuance of
28 a permit.

29 (e) ~~When deemed necessary by the board of zoning appeals, the~~
30 ~~board may grant variances and exceptions from the zoning regulations on~~
31 ~~the following basis and in the manner hereinafter provided:-~~

32 (1) ~~To authorize in specific cases a variance from the specific terms~~
33 ~~of the regulations which *that* will not be contrary to the public interest and~~
34 ~~where, due to special conditions, a literal enforcement of the provisions of~~
35 ~~the regulations, in an individual case, results in unnecessary hardship, and~~
36 ~~provided that the spirit of the regulations shall be observed, public safety~~
37 ~~and welfare secured, and substantial justice done. Such variance shall not~~
38 ~~permit any use not permitted by the zoning regulations in such district. A~~
39 ~~request for a variance may be granted in such case, upon a finding by the~~
40 ~~board that all of the following conditions have been met:-~~

41 (A) ~~That the variance requested arises from such condition which~~
42 ~~*that* is unique to the property in question and which is not ordinarily found~~
43 ~~in the same zone or district; and is not created by an action or actions of~~

1 the property owner or the applicant;

2 (B) that the granting of the permit for the variance will not adversely
3 affect the rights of adjacent property owners or residents;

4 (C) that the strict application of the provisions of the zoning
5 regulations of which variance is requested will constitute unnecessary
6 hardship upon the property owner represented in the application;

7 (D) that the variance desired will not adversely affect the public
8 health, safety, morals, order, convenience, prosperity, or general welfare;
9 and

10 (E) that granting the variance desired will not be opposed to the
11 general spirit and intent of the zoning regulations; and

12 (2) to grant exceptions to the provisions of the zoning regulation in
13 those instances where the board is specifically authorized to grant such
14 exceptions and only under the terms of the zoning regulation. In no event
15 shall exceptions to the provisions of the zoning regulation be granted
16 where the use or exception contemplated is not specifically listed as an
17 exception in the zoning regulation. Further, under no conditions shall the
18 board of zoning appeals have the power to grant an exception when
19 conditions of this exception, as established in the zoning regulation by the
20 governing body, are not found to be present.

21 (f) Any person, official or governmental agency dissatisfied with any
22 order or determination of the board, *including a decision deemed to have*
23 *been made pursuant to section 3, and amendments thereto*, may bring an
24 action in the district court of the county to determine the reasonableness of
25 any such order or determination. Such appeal shall be filed within 30 days
26 of the final decision of the board.

27 (g) A planning commission also may be designated as a board of
28 zoning appeals under this section.

29 (h) The provisions of this section shall become effective on and after
30 January 1, 1992 *the fast-track permits act, sections 1 through 3, and*
31 *amendments thereto, shall apply to this section.*

32 Sec. 6. K.S.A. 12-752 and 12-759 are hereby repealed.

33 Sec. 7. This act shall take effect and be in force from and after its
34 publication in the statute book.