

SENATE BILL 363

By Haile

AN ACT to amend Tennessee Code Annotated, Title 7;
Title 13 and Title 66, relative to housing sold or
rented at below market value.

WHEREAS, the 109th General Assembly enacted Public Chapter 822 that prohibited a local governmental unit from enacting, maintaining, or enforcing "any zoning regulation, requirement, or condition of development imposed by land use or zoning ordinances, resolutions, or regulations or pursuant to any special permit, special exception, or subdivision plan that requires the direct or indirect allocation of a percentage of existing or newly constructed private residential or commercial rental units for long-term retention as affordable or workforce housing"; and

WHEREAS, the Metropolitan Government of Nashville and Davidson County enacted an ordinance to incentivize inclusionary housing with any residential development that seeks additional development entitlements beyond that permitted by the current zoning district, which is in direct conflict with Public Chapter 822; and

WHEREAS, it is the intent of the General Assembly to clarify that neither Nashville nor any local government has the authority to enact such an ordinance that would place requirements regarding inclusionary, affordable, or below market value housing when entitlements, variances, or any other form of permit or authorization is sought from the local government; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Section 66-35-102, is amended by deleting subsections (b) and (c) and substituting instead the following:

(b)

(1) Notwithstanding any provision of law to the contrary, a local government unit, or any subdivision or instrumentality thereof, shall not enact, maintain, or enforce any ordinance, resolution, regulation, rule, or other requirement of any type that:

(A) Requires the direct or indirect allocation of existing or newly constructed private residential or commercial rental units to be sold or rented at below market rates;

(B) Conditions any zoning change, variance, building permit, or any change in land use restrictions or requirements, on the allocation of existing or newly constructed private residential or commercial rental units to be sold or rented at below market rates; or

(C) Requires a person to waive the person's constitutionally protected rights related to real property in order that the local government unit can increase the number of existing or newly constructed private residential or commercial rental units that would be available for purchase or lease at below market rates within the jurisdiction of the local government unit.

(2) This subsection (b) does not prohibit a local government unit from creating or implementing a purely voluntary incentive-based program designed to increase the construction or rehabilitation of workforce or affordable private residential or commercial rental units, which may include providing local tax incentives, subsidization, real property or infrastructure assistance, or any other incentive that makes construction of affordable housing more economical, so long as no power or authority granted to the local government unit to regulate zoning or land use planning is used to incentivize or leverage a person to develop, build, sell, or rent housing at below market value.

SECTION 2. All ordinances, resolutions, regulations, rules, or requirements of any type of a local government unit that are in conflict with this act are void and unenforceable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.