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ENGROSSED SUBSTITUTE SENATE BILL 5727

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senate Committee on Governmental Operations (originally sponsored by Senators Amondson, Vognild, Owen, Stratton, McCaslin, West and Johnson).

Read first time March 6, 1991.

1            AN ACT Relating to the imposition of moratorium or interim zoning  
2 by permit-granting agencies; adding new sections to chapter 36.70 RCW;  
3 adding new sections to chapter 35.63 RCW; adding new sections to  
4 chapter 35A.63 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.**            The declaration of moratoria on  
7 construction and land development by any permit-granting agency or the  
8 imposition of an interim zone may have a negative effect on the  
9 policies and goals of state and other local governments within the  
10 state, and therefore is a matter of state-wide concern. Such moratoria  
11 or interim zoning, particularly when limited in duration and scope and  
12 adopted pursuant to growth management systems that further the  
13 community planning goals and local comprehensive plans, may be both  
14 necessary and desirable.

1           However, clear state standards should be established to assure that  
2 the need for moratoria or interim zoning is considered and documented,  
3 the impact on necessary development and particularly housing is  
4 minimized, and necessary and properly enacted moratoria or interim  
5 zoning are not subjected to undue litigation.

6           NEW SECTION.   **Sec. 2.**           Unless the context clearly requires  
7 otherwise, the definitions in this section apply throughout sections 2  
8 through 5 of this act.

9           (1) "Moratorium" means a pattern or practice of delaying or  
10 stopping issuance of permits, authorizations, or approvals necessary  
11 for the subdivision and partitioning of real property or development on  
12 real property or any construction pursuant to such a permit.

13           (2) "Permit-granting agency" means any branch of state government  
14 which is a lead agency or an agency with jurisdiction under the state  
15 environmental policy act, chapter 43.21C RCW, involved with the  
16 development, subdivision, or construction on real property.

17           (3) "Facilities or resource-based emergency" means the emergency  
18 which exists with respect to facilities or resources when the projected  
19 development within an area will result in the creation of a demand or  
20 impact on the facilities or resources which will exceed the capacity of  
21 the facilities or resources within the period of the moratorium or  
22 interim zoning. Facilities may include transportation, sewer, water,  
23 storm water, or septic systems. Resources may include any property or  
24 interest identified as environmentally sensitive, including but not  
25 limited to agricultural or timber lands, ground water, surface water,  
26 shorelines and wetlands, and air. Capacity or permitted levels of  
27 contamination must be measured by existing adopted regulations at the  
28 state, federal, or local level.

1 (4) "Land use emergency" means the emergency which exists when an  
2 unanticipated change occurs in a community or upon the adoption of a  
3 change in plan in a community which creates a situation in which a  
4 community may lose the benefits of planning unless a moratorium is  
5 imposed or an interim zone is adopted. Development which occurs in  
6 accordance with an adopted comprehensive plan or proposed changes to  
7 adopted plans may not be considered an unanticipated change for  
8 purposes of declaring a land use emergency.

9 (5) "Interim zoning" means a deliberate and purposeful action  
10 designed to classify or regulate uses of land and related matters and  
11 is necessary to preserve the zoning scheme as presented to the public  
12 in the comprehensive plan and attendant maps and resolutions or  
13 ordinances.

14 (6) "Regulation" means a statute, rule, or standard adopted by the  
15 permit-granting agency to establish standards, procedures, or criteria  
16 for the subdivision, development, or construction of real property.

17 NEW SECTION. **Sec. 3.** Any permit-granting agency seeking to  
18 adopt a rule or ordinance which would impose a moratorium or interim  
19 zoning because of a facilities or resource-based emergency or land use  
20 emergency, shall only adopt such regulation as provided in this  
21 section.

22 (1) If the permit-granting agency deals through a planning agency,  
23 the matter must be recommended by the planning commission and adopted  
24 by the governmental board, council, or commission of the permit-  
25 granting agency. Any other permit-granting agency must effect the  
26 action by regulation adopted by the governing board. Such regulations  
27 shall have no force or effect after thirty days unless notice and  
28 public hearing have occurred and findings are made under this section  
29 within thirty days after adoption.

1 (2) For a facilities or resource-based emergency, the following  
2 findings shall be reasonably documented by the permit-granting agency:

3 (a) The current level, service, or current contaminant level of the  
4 affected facilities or resources;

5 (b) The adopted regulation defining capacity of the facility or  
6 safe levels of potential contaminants in the affected resource.  
7 However, if the affected resource is drinking water, ground water,  
8 aquifers, or air, the adopted standard for emergency purposes may not  
9 be more stringent than the standards adopted through state or federal  
10 regulations;

11 (c) The factors which demonstrate that capacity or safe levels for  
12 potential contaminants will be exceeded during the period of the  
13 moratorium or interim zoning ordinance;

14 (d) The factors which demonstrate that the scope and definition of  
15 the moratorium or interim zoning ordinance will serve to equalize the  
16 effect of the moratorium or interim zoning over all property owners to  
17 the extent possible and not merely limit the effect to a select few.

18 (3) For a land use emergency, the following findings shall be  
19 reasonably documented by the board:

20 (a) The nature of the change in the community and the reason it was  
21 unanticipated;

22 (b) The factors which make the interim rules during a moratorium or  
23 interim zoning period consistent with adopted comprehensive plans;

24 (c) The geographic extent of the emergency and the reason the  
25 boundaries selected are the minimum necessary to deal with the  
26 identified emergency;

27 (d) The facts which demonstrate why the prohibited development or  
28 activity which will be shifted out of the area affected by the  
29 emergency during the period of moratorium or interim zoning will not

1 cause an emergency in nearby or adjoining areas to which the prohibited  
2 development or activity would likely shift;

3 (e) The facts which demonstrate that the cost to the public of the  
4 consequences of the unanticipated change will be greater than the cost  
5 to the property owners within the area affected by the emergency; and

6 (f) The nature and extent of the public resources which demonstrate  
7 the permit-granting agency can resolve the emergency within the time  
8 limits identified in subsection (4) of this section.

9 (4) No moratorium or interim zoning shall be effective for a period  
10 longer than one hundred twenty days, but such a moratorium or interim  
11 zoning may be extended provided the city, county, or special district  
12 adopting the moratorium or interim zoning:

13 (a) Finds that the problem giving rise to the need for a moratorium  
14 or interim zoning continues to exist;

15 (b) Demonstrates that reasonable progress is being made to  
16 alleviate the problem giving rise to the moratorium or interim zoning;  
17 and

18 (c) Sets a specific duration for the renewal of the moratorium or  
19 interim zoning. A moratorium or interim zoning may be extended more  
20 than once but no single extension may be for a period longer than six  
21 months.

22 (5) A renewal shall only be after a notice and public hearing.

23 (6) A renewal shall require reconfirmation of the factual issues  
24 identified in subsections (2) and (3) of this section.

25 NEW SECTION. **Sec. 4.** Any moratorium or interim zoning  
26 ordinance adopted on an emergency basis, including an emergency under  
27 the state environmental policy act, is null and void unless the  
28 procedures in section 3 of this act are followed.

1        NEW SECTION.    **Sec. 5.**        Any person aggrieved by violation of  
2 sections 2 through 4 of this act may bring an action in superior court  
3 in the county in which the moratorium or interim zoning takes effect.  
4 The successful party in any action shall be entitled to reimbursement  
5 of reasonable costs and fees, including attorneys' fees.

6        NEW SECTION.    **Sec. 6.**        Unless the context clearly requires  
7 otherwise, the definitions in this section apply throughout sections 6  
8 through 10 of this act.

9        (1) "Moratorium" means a pattern or practice of delaying or  
10 stopping issuance of permits, authorizations, or approvals necessary  
11 for the subdivision and partitioning of real property or development on  
12 real property or any construction pursuant to such a permit.

13        (2) "Permit-granting agency" means any branch of state government  
14 which is a lead agency or an agency with jurisdiction under the state  
15 environmental policy act, chapter 43.21C RCW, involved with the  
16 development, subdivision, or construction on real property.

17        (3) "Facilities or resource-based emergency" means the emergency  
18 which exists with respect to facilities or resources when the projected  
19 development within an area will result in the creation of a demand or  
20 impact on the facilities or resources which will exceed the capacity of  
21 the facilities or resources within the period of the moratorium or  
22 interim zoning. Facilities may include transportation, sewer, water,  
23 storm water, or septic systems. Resources may include any property or  
24 interest identified as environmentally sensitive, including but not  
25 limited to agricultural or timber lands, ground water, surface water,  
26 shorelines and wetlands, and air. Capacity or permitted levels of  
27 contamination must be measured by existing adopted regulations at the  
28 state, federal, or local level.

1 (4) "Land use emergency" means the emergency which exists when an  
2 unanticipated change occurs in a community or upon the adoption of a  
3 change in plan in a community which creates a situation in which a  
4 community may lose the benefits of planning unless a moratorium is  
5 imposed or an interim zone is adopted. Development which occurs in  
6 accordance with an adopted comprehensive plan or proposed changes to  
7 adopted plans may not be considered an unanticipated change for  
8 purposes of declaring a land use emergency.

9 (5) "Interim zoning" means a deliberate and purposeful action  
10 designed to classify or regulate uses of land and related matters and  
11 is necessary to preserve the zoning scheme as presented to the public  
12 in the comprehensive plan and attendant maps and resolutions or  
13 ordinances.

14 (6) "Regulation" means a statute, rule, or standard adopted by the  
15 permit-granting agency to establish standards, procedures, or criteria  
16 for the subdivision, development, or construction of real property.

17 NEW SECTION. **Sec. 7.** Any permit-granting agency seeking to  
18 adopt a rule or ordinance which would impose a moratorium or interim  
19 zoning because of a facilities or resource-based emergency or land use  
20 emergency, shall only adopt such regulation as provided in this  
21 section.

22 (1) If the permit-granting agency deals through a planning agency,  
23 the matter must be recommended by the planning commission and adopted  
24 by the governmental board, council, or commission of the permit-  
25 granting agency. Any other permit-granting agency must effect the  
26 action by regulation adopted by the governing board. Such regulations  
27 shall have no force or effect after thirty days unless notice and  
28 public hearing have occurred and findings are made under this section  
29 within thirty days after adoption.

1 (2) For a facilities or resource-based emergency, the following  
2 findings shall be reasonably documented by the permit-granting agency:

3 (a) The current level, service, or current contaminant level of the  
4 affected facilities or resources;

5 (b) The adopted regulation defining capacity of the facility or  
6 safe levels of potential contaminants in the affected resource.  
7 However, if the affected resource is drinking water, ground water,  
8 aquifers, or air, the adopted standard for emergency purposes may not  
9 be more stringent than the standards adopted through state or federal  
10 regulations;

11 (c) The factors which demonstrate that capacity or safe levels for  
12 potential contaminants will be exceeded during the period of the  
13 moratorium or interim zoning ordinance;

14 (d) The factors which demonstrate that the scope and definition of  
15 the moratorium or interim zoning ordinance will serve to equalize the  
16 effect of the moratorium or interim zoning over all property owners to  
17 the extent possible and not merely limit the effect to a select few.

18 (3) For a land use emergency, the following findings shall be  
19 reasonably documented by the board:

20 (a) The nature of the change in the community and the reason it was  
21 unanticipated;

22 (b) The factors which make the interim rules during a moratorium or  
23 interim zoning period consistent with adopted comprehensive plans;

24 (c) The geographic extent of the emergency and the reason the  
25 boundaries selected are the minimum necessary to deal with the  
26 identified emergency;

27 (d) The facts which demonstrate why the prohibited development or  
28 activity which will be shifted out of the area affected by the  
29 emergency during the period of moratorium or interim zoning will not

1 cause an emergency in nearby or adjoining areas to which the prohibited  
2 development or activity would likely shift;

3 (e) The facts which demonstrate that the cost to the public of the  
4 consequences of the unanticipated change will be greater than the cost  
5 to the property owners within the area affected by the emergency; and

6 (f) The nature and extent of the public resources which demonstrate  
7 the permit-granting agency can resolve the emergency within the time  
8 limits identified in subsection (4) of this section.

9 (4) No moratorium or interim zoning shall be effective for a period  
10 longer than one hundred twenty days, but such a moratorium or interim  
11 zoning may be extended provided the city, county, or special district  
12 adopting the moratorium or interim zoning:

13 (a) Finds that the problem giving rise to the need for a moratorium  
14 or interim zoning continues to exist;

15 (b) Demonstrates that reasonable progress is being made to  
16 alleviate the problem giving rise to the moratorium or interim zoning;  
17 and

18 (c) Sets a specific duration for the renewal of the moratorium or  
19 interim zoning. A moratorium or interim zoning may be extended more  
20 than once but no single extension may be for a period longer than six  
21 months.

22 (5) A renewal shall only be after a notice and public hearing.

23 (6) A renewal shall require reconfirmation of the factual issues  
24 identified in subsections (2) and (3) of this section.

25 NEW SECTION. **Sec. 8.** Any moratorium or interim zoning  
26 ordinance adopted on an emergency basis, including an emergency under  
27 the state environmental policy act, is null and void unless the  
28 procedures in section 7 of this act are followed.

1        NEW SECTION.    **Sec. 9.**        The provisions of any moratorium or  
2 interim zoning ordinance enacted by initiative or referendum are exempt  
3 from sections 6 through 10 of this act.

4        NEW SECTION.    **Sec. 10.**        Any person aggrieved by violation of  
5 sections 6 through 8 of this act may bring an action in superior court  
6 in the county in which the moratorium or interim zoning takes effect.  
7 The successful party in any action shall be entitled to reimbursement  
8 of reasonable costs and fees, including attorneys' fees.

9        NEW SECTION.    **Sec. 11.**        Unless the context clearly requires  
10 otherwise, the definitions in this section apply throughout sections 11  
11 through 14 of this act.

12        (1) "Moratorium" means a pattern or practice of delaying or  
13 stopping issuance of permits, authorizations, or approvals necessary  
14 for the subdivision and partitioning of real property or development on  
15 real property or any construction pursuant to such a permit.

16        (2) "Permit-granting agency" means any branch of state government  
17 which is a lead agency or an agency with jurisdiction under the state  
18 environmental policy act, chapter 43.21C RCW, involved with the  
19 development, subdivision, or construction on real property.

20        (3) "Facilities or resource-based emergency" means the emergency  
21 which exists with respect to facilities or resources when the projected  
22 development within an area will result in the creation of a demand or  
23 impact on the facilities or resources which will exceed the capacity of  
24 the facilities or resources within the period of the moratorium or  
25 interim zoning. Facilities may include transportation, sewer, water,  
26 storm water, or septic systems. Resources may include any property or  
27 interest identified as environmentally sensitive, including but not  
28 limited to agricultural or timber lands, ground water, surface water,

1 shorelines and wetlands, and air. Capacity or permitted levels of  
2 contamination must be measured by existing adopted regulations at the  
3 state, federal, or local level.

4 (4) "Land use emergency" means the emergency which exists when an  
5 unanticipated change occurs in a community or upon the adoption of a  
6 change in plan in a community which creates a situation in which a  
7 community may lose the benefits of planning unless a moratorium is  
8 imposed or an interim zone is adopted. Development which occurs in  
9 accordance with an adopted comprehensive plan or proposed changes to  
10 adopted plans may not be considered an unanticipated change for  
11 purposes of declaring a land use emergency.

12 (5) "Interim zoning" means a deliberate and purposeful action  
13 designed to classify or regulate uses of land and related matters and  
14 is necessary to preserve the zoning scheme as presented to the public  
15 in the comprehensive plan and attendant maps and resolutions or  
16 ordinances.

17 (6) "Regulation" means a statute, rule, or standard adopted by the  
18 permit-granting agency to establish standards, procedures, or criteria  
19 for the subdivision, development, or construction of real property.

20 NEW SECTION. **Sec. 12.** Any permit-granting agency seeking to  
21 adopt a rule or ordinance which would impose a moratorium or interim  
22 zoning because of a facilities or resource-based emergency or land use  
23 emergency, shall only adopt such regulation as provided in this  
24 section.

25 (1) If the permit-granting agency deals through a planning agency,  
26 the matter must be recommended by the planning commission and adopted  
27 by the governmental board, council, or commission of the permit-  
28 granting agency. Any other permit-granting agency must effect the  
29 action by regulation adopted by the governing board. Such regulations

1 shall have no force or effect after thirty days unless notice and  
2 public hearing have occurred and findings are made under this section  
3 within thirty days after adoption.

4 (2) For a facilities or resource-based emergency, the following  
5 findings shall be reasonably documented by the permit-granting agency:

6 (a) The current level, service, or current contaminant level of the  
7 affected facilities or resources;

8 (b) The adopted regulation defining capacity of the facility or  
9 safe levels of potential contaminants in the affected resource.  
10 However, if the affected resource is drinking water, ground water,  
11 aquifers, or air, the adopted standard for emergency purposes may not  
12 be more stringent than the standards adopted through state or federal  
13 regulations;

14 (c) The factors which demonstrate that capacity or safe levels for  
15 potential contaminants will be exceeded during the period of the  
16 moratorium or interim zoning ordinance;

17 (d) The factors which demonstrate that the scope and definition of  
18 the moratorium or interim zoning ordinance will serve to equalize the  
19 effect of the moratorium or interim zoning over all property owners to  
20 the extent possible and not merely limit the effect to a select few.

21 (3) For a land use emergency, the following findings shall be  
22 reasonably documented by the board:

23 (a) The nature of the change in the community and the reason it was  
24 unanticipated;

25 (b) The factors which make the interim rules during a moratorium or  
26 interim zoning period consistent with adopted comprehensive plans;

27 (c) The geographic extent of the emergency and the reason the  
28 boundaries selected are the minimum necessary to deal with the  
29 identified emergency;

1 (d) The facts which demonstrate why the prohibited development or  
2 activity which will be shifted out of the area affected by the  
3 emergency during the period of moratorium or interim zoning will not  
4 cause an emergency in nearby or adjoining areas to which the prohibited  
5 development or activity would likely shift;

6 (e) The facts which demonstrate that the cost to the public of the  
7 consequences of the unanticipated change will be greater than the cost  
8 to the property owners within the area affected by the emergency; and

9 (f) The nature and extent of the public resources which demonstrate  
10 the permit-granting agency can resolve the emergency within the time  
11 limits identified in subsection (4) of this section.

12 (4) No moratorium or interim zoning shall be effective for a period  
13 longer than one hundred twenty days, but such a moratorium or interim  
14 zoning may be extended provided the city, county, or special district  
15 adopting the moratorium or interim zoning:

16 (a) Finds that the problem giving rise to the need for a moratorium  
17 or interim zoning continues to exist;

18 (b) Demonstrates that reasonable progress is being made to  
19 alleviate the problem giving rise to the moratorium or interim zoning;  
20 and

21 (c) Sets a specific duration for the renewal of the moratorium or  
22 interim zoning. A moratorium or interim zoning may be extended more  
23 than once but no single extension may be for a period longer than six  
24 months.

25 (5) A renewal shall only be after a notice and public hearing.

26 (6) A renewal shall require reconfirmation of the factual issues  
27 identified in subsections (2) and (3) of this section.

28 NEW SECTION. **Sec. 13.** Any moratorium or interim zoning  
29 ordinance adopted on an emergency basis, including an emergency under

1 the state environmental policy act, is null and void unless the  
2 procedures in section 12 of this act are followed.

3 NEW SECTION. **Sec. 14.** The provisions of any moratorium or  
4 interim zoning ordinance enacted by initiative or referendum are exempt  
5 from sections 11 through 15 of this act.

6 NEW SECTION. **Sec. 15.** Any person aggrieved by violation of  
7 sections 11 through 14 of this act may bring an action in superior  
8 court in the county in which the moratorium or interim zoning takes  
9 effect. The successful party in any action shall be entitled to  
10 reimbursement of reasonable costs and fees, including attorneys'  
11 fees.

12 NEW SECTION. **Sec. 16.** (1) Sections 2 through 5 of this act are  
13 each added to chapter 36.70 RCW.

14 (2) Sections 6 through 10 of this act are each added to chapter  
15 35.63 RCW.

16 (3) Sections 11 through 15 of this act are each added to chapter  
17 35A.63 RCW.