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SENATE BILL 5727

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Amondson, Vognild, Owen, Stratton, McCaslin, West and Johnson.

Read first time February 18, 1991.      Referred to Committee on Governmental Operations.

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 36.63 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 8 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 device  
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 permitting agency seeking to adopt  
18 a rule or ordinance which would impose a moratorium or interim zoning  
19 because of facilities, resources, or land use emergencies, shall only  
20 adopt such regulation as provided in this section.

21 (1) If the permit-granting agency deals through a planning agency,  
22 the matter must be recommended by the planning commission and adopted  
23 by the governmental board, council, or commission of the permit-  
24 granting agency. Any other permit-granting agency must effect the  
25 action by regulation adopted by the governing board. All such  
26 regulations must be approved by an affirmative vote of not less than  
27 seventy-five percent of the governing board.

1 (2) In the event of a facilities or resource-based emergency,  
2 notice and hearing are not required if the following findings are  
3 reasonably documented by the permit-granting agency:

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

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

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

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

19 (3) In the event of a land use emergency, notice and hearing are  
20 not required if the following findings are reasonably documented by the  
21 board:

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

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

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

29 (d) The facts which demonstrate why the prohibited development or  
30 activity which will be shifted out of the area affected by the

1 emergency during the period of moratorium or interim zoning will not  
2 cause an emergency in nearby or adjoining areas to which the prohibited  
3 development or activity would likely shift;

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

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

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

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

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

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

23 A renewal shall only be after a notice and public hearing.

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

26 NEW SECTION. **Sec. 4.** The municipality shall document any  
27 decision made in sections 3 through 8 of this act as required by  
28 chapter 43.21C RCW. In the event the environmental review officer  
29 determines the initial action exempt by reason of RCW 43.21C.110, as

1 defined in WAC 197-11-890, the municipality shall not extend the  
2 moratorium or interim zoning as provided in section 3(4) of this act  
3 without an environmental assessment and appropriate action as required  
4 under chapter 43.21C RCW.

5 NEW SECTION. **Sec. 5.** A permit-granting agency that adopts a  
6 moratorium or interim zoning shall, within sixty days after the  
7 effective date of the moratorium or interim zone, adopt a program which  
8 seeks to correct the problem creating the moratorium or interim zoning.  
9 The program shall be presented at a public hearing. The permit-  
10 granting agency shall give advance notice of the time and date of the  
11 public hearing.

12 NEW SECTION. **Sec. 6.** Any ordinance regulating a moratorium or  
13 interim zoning shall identify the criteria by which the permit-granting  
14 agency will determine vested projects. The ordinance shall provide  
15 that all applications on file, for which the initial fee has been paid,  
16 shall be processed to completion under existing rules even if the state  
17 environmental policy act review has not been completed or several  
18 approvals must be obtained prior to the issuance of building permits.

19 NEW SECTION. **Sec. 7.** Any moratorium or interim ordinance  
20 adopted on an emergency basis, including the emergency section under  
21 the state environmental policy act, WAC 197-11-880, is null and void  
22 unless the procedures in sections 3 through 6 of this act are followed.

23 NEW SECTION. **Sec. 8.** Any person aggrieved by violation of  
24 this section may enforce this section by action in superior court in  
25 the county in which the moratorium or interim zoning takes effect. The

1 successful party in any action shall be entitled to reimbursement of  
2 reasonable costs and fees, including attorneys' fees.

3 NEW SECTION. **Sec. 9.** Unless the context clearly requires  
4 otherwise, the definitions in this section apply throughout sections 9  
5 through 15 of this act.

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

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

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

26 (4) "Land use emergency" means the emergency which exists when an  
27 unanticipated change occurs in a community or upon the adoption of a  
28 change in plan in a community which creates a situation in which a  
29 community may lose the benefits of planning unless a moratorium is

1 imposed or an interim zone is adopted. Development which occurs in  
2 accordance with an adopted comprehensive plan or proposed changes to  
3 adopted plans may not be considered an unanticipated change for  
4 purposes of declaring a land use emergency.

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

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

13 NEW SECTION. **Sec. 10.** Any permitting agency seeking to adopt  
14 a rule or ordinance which would impose a moratorium or interim zoning  
15 because of facilities, resources, or land use emergencies, shall only  
16 adopt such regulation as provided in this section.

17 (1) If the permit-granting agency deals through a planning agency,  
18 the matter must be recommended by the planning commission and adopted  
19 by the governmental board, council, or commission of the permit-  
20 granting agency. Any other permit-granting agency must effect the  
21 action by regulation adopted by the governing board. All such  
22 regulations must be approved by an affirmative vote of not less than  
23 seventy-five percent of the governing board.

24 (2) In the event of a facilities or resource-based emergency,  
25 notice and hearing are not required if the following findings are  
26 reasonably documented by the permit-granting agency:

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

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

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

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

14 (3) In the event of a land use emergency, notice and hearing are  
15 not required if the following findings are reasonably documented by the  
16 board:

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

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

21 (c) The geographic extent of the emergency and the reason the  
22 boundaries selected are the minimum necessary to deal with the  
23 identified emergency;

24 (d) The facts which demonstrate why the prohibited development or  
25 activity which will be shifted out of the area affected by the  
26 emergency during the period of moratorium or interim zoning will not  
27 cause an emergency in nearby or adjoining areas to which the prohibited  
28 development or activity would likely shift;

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

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

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

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

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

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

20 A renewal shall only be after a notice and public hearing.

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

23 NEW SECTION. **Sec. 11.** The municipality shall document any  
24 decision made in sections 10 through 15 of this act as required by  
25 chapter 43.21C RCW. In the event the environmental review officer  
26 determines the initial action exempt by reason of RCW 43.21C.110, as  
27 defined in WAC 197-11-890, the municipality shall not extend the  
28 moratorium or interim zoning as provided in section 10(4) of this act

1 without an environmental assessment and appropriate action as required  
2 under chapter 43.21C RCW.

3 NEW SECTION. **Sec. 12.** A permit-granting agency that adopts a  
4 moratorium or interim zoning shall, within sixty days after the  
5 effective date of the moratorium or interim zone, adopt a program which  
6 seeks to correct the problem creating the moratorium or interim zoning.  
7 The program shall be presented at a public hearing. The permit-  
8 granting agency shall give advance notice of the time and date of the  
9 public hearing.

10 NEW SECTION. **Sec. 13.** Any ordinance regulating a moratorium or  
11 interim zoning shall identify the criteria by which the permit-granting  
12 agency will determine vested projects. The ordinance shall provide  
13 that all applications on file, for which the initial fee has been paid,  
14 shall be processed to completion under existing rules even if the state  
15 environmental policy act review has not been completed or several  
16 approvals must be obtained prior to the issuance of building permits.

17 NEW SECTION. **Sec. 14.** Any moratorium or interim ordinance  
18 adopted on an emergency basis, including the emergency section under  
19 the state environmental policy act, WAC 197-11-880, is null and void  
20 unless the procedures in sections 10 through 13 of this act are  
21 followed.

22 NEW SECTION. **Sec. 15.** Any person aggrieved by violation of  
23 this section may enforce this section by action in superior court in  
24 the county in which the moratorium or interim zoning takes effect. The  
25 successful party in any action shall be entitled to reimbursement of  
26 reasonable costs and fees, including attorneys' fees.

1        NEW SECTION.    **Sec. 16.**

2        Unless the context clearly requires  
3 otherwise, the definitions in this section apply throughout sections 16  
4 through 22 of this act.

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

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

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

24        (4) "Land use emergency" means the emergency which exists when an  
25 unanticipated change occurs in a community or upon the adoption of a  
26 change in plan in a community which creates a situation in which a  
27 community may lose the benefits of planning unless a moratorium is  
28 imposed or an interim zone is adopted. Development which occurs in  
29 accordance with an adopted comprehensive plan or proposed changes to

1 adopted plans may not be considered an unanticipated change for  
2 purposes of declaring a land use emergency.

3 (5) "Interim zoning" means a deliberate and purposeful device  
4 designed to classify or regulate uses of land and related matters and  
5 is necessary to preserve the zoning scheme as presented to the public  
6 in the comprehensive plan and attendant maps and resolutions or  
7 ordinances.

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

11 NEW SECTION. **Sec. 17.** Any permitting agency seeking to adopt  
12 a rule or ordinance which would impose a moratorium or interim zoning  
13 because of facilities, resources, or land use emergencies, shall only  
14 adopt such regulation as provided in this section.

15 (1) If the permit-granting agency deals through a planning agency,  
16 the matter must be recommended by the planning commission and adopted  
17 by the governmental board, council, or commission of the permit-  
18 granting agency. Any other permit-granting agency must effect the  
19 action by regulation adopted by the governing board. All such  
20 regulations must be approved by an affirmative vote of not less than  
21 seventy-five percent of the governing board.

22 (2) In the event of a facilities or resource-based emergency,  
23 notice and hearing are not required if the following findings are  
24 reasonably documented by the permit-granting agency:

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

27 (b) The adopted regulation defining capacity of the facility or  
28 safe levels of potential contaminants in the affected resource.  
29 However, if the affected resource is drinking water, ground water,

1 aquifers, or air, the adopted standard for emergency purposes may not  
2 be more stringent than the standards adopted through state or federal  
3 regulations;

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

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

11 (3) In the event of a land use emergency, notice and hearing are  
12 not required if the following findings are reasonably documented by the  
13 board:

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

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

18 (c) The geographic extent of the emergency and the reason the  
19 boundaries selected are the minimum necessary to deal with the  
20 identified emergency;

21 (d) The facts which demonstrate why the prohibited development or  
22 activity which will be shifted out of the area affected by the  
23 emergency during the period of moratorium or interim zoning will not  
24 cause an emergency in nearby or adjoining areas to which the prohibited  
25 development or activity would likely shift;

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

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

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

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

10 (b) Demonstrates that reasonable progress is being made to  
11 alleviate the problem giving rise to the moratorium or interim zoning;  
12 and

13 (c) Sets a specific duration for the renewal of the moratorium or  
14 interim zoning. A moratorium or interim zoning may be extended more  
15 than once but no single extension may be for a period longer than six  
16 months.

17 A renewal shall only be after a notice and public hearing.

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

20 NEW SECTION. **Sec. 18.** The municipality shall document any  
21 decision made in sections 17 through 22 of this act as required by  
22 chapter 43.21C RCW. In the event the environmental review officer  
23 determines the initial action exempt by reason of RCW 43.21C.110, as  
24 defined in WAC 197-11-890, the municipality shall not extend the  
25 moratorium or interim zoning as provided in section 17(4) of this act  
26 without an environmental assessment and appropriate action as required  
27 under chapter 43.21C RCW.

1        NEW SECTION.    **Sec. 19.**        A permit-granting agency that adopts a  
2 moratorium or interim zoning shall, within sixty days after the  
3 effective date of the moratorium or interim zone, adopt a program which  
4 seeks to correct the problem creating the moratorium or interim zoning.  
5 The program shall be presented at a public hearing.    The permit-  
6 granting agency shall give advance notice of the time and date of the  
7 public hearing.

8        NEW SECTION.    **Sec. 20.**        Any ordinance regulating a moratorium or  
9 interim zoning shall identify the criteria by which the permit-granting  
10 agency will determine vested projects.    The ordinance shall provide  
11 that all applications on file, for which the initial fee has been paid,  
12 shall be processed to completion under existing rules even if the state  
13 environmental policy act review has not been completed or several  
14 approvals must be obtained prior to the issuance of building permits.

15        NEW SECTION.    **Sec. 21.**        Any moratorium or interim ordinance  
16 adopted on an emergency basis, including the emergency section under  
17 the state environmental policy act, WAC 197-11-880, is null and void  
18 unless the procedures in sections 17 through 20 of this act are  
19 followed.

20        NEW SECTION.    **Sec. 22.**        Any person aggrieved by violation of  
21 this section may enforce this section by action in superior court in  
22 the county in which the moratorium or interim zoning takes effect.    The  
23 successful party in any action shall be entitled to reimbursement of  
24 reasonable costs and fees, including attorneys' fees.

25        NEW SECTION.    **Sec. 23.**        (1) Sections 2 through 8 of this act are  
26 each added to chapter 36.70 RCW.

1       (2) Sections 9 through 15 of this act are each added to chapter  
2 36.63 RCW.

3       (3) Sections 16 through 22 of this act are each added to chapter  
4 35A.63 RCW.